PRINCIPLES OF
PLEADINGS
AND
FORMS

WITH
QUESTIONS SET AT DELHI, PUNJAB,
AGRA, POONA, BOMBAY, AND OTHER
UNIVERSITIES IN THE FORM OF
MARGINAL NOTES.

BY
TWO VAKILS

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PRINCIPLES OF

PLEADINGS

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CHAPTER I

PLEADINGS GENERALLY.

☞ **Meaning of 'Pleading"**:—The word "Pleading" has been defined in Order 6 rule 1 of the Code of Civil Procedure which means a plaint or a written statement. A "**plaint**" is a document through which the proceedings (suit) are originated in a civil Court by the plaintiff who seeks some relief against the defendant. In this the plaintiff sets out his cause of action with all necessary particulars. "**Written Statement**" means a defence given by the defendant, in the Court, in which he deals with every material fact alleged by the plaintiff in the plaint and also states any new facts which tell in his favour, adding such legal objections as he wishes to take to the claim In the written statement the defendant admits or traverses the allegations made by the plaintiff in the plaint. So a pleading is the statement in a logical form of the facts which constitute the plaintiff's cause of [redacted] Procedure Code is not exhaustive. Sometimes petitions and affidavits are treated as pleadings in suits although they do not conform to the formal parts of a plaint or a written statement. A fuller definition has been adopted by the original side rules of the Madras High Court thus :—

Explain 'Pleadings' [Ag. U. 51]

Explain the meaning and significance of a pleading. [Poona U. 52.]

"Pleading includes a plaint, written statement,

petition, special case, memorandum of appeal, memorandum of objections.

Besides the plaint and the written statement of the defendant, the other pleadings that may be filed may be subsequent pleadings or additional pleadings.

Generally no pleading subsequent to the written statement of the defendant other than by way of defence to a claim of set off shall be presented except with the leave of the Court and upon such terms as the Court deems fit, but sometimes due to incompleteness or inaccuracy of a plaint or a written statement or where written statement alleges new facts, or where no written statement has been filed at all, the Court cannot ascertain from the written pleadings of the parties what facts are in dispute between them; thus the Court may at any time require a plaintiff to file a written statement or an additional written statement from the defendant and fix a time for presenting the same. (0 8, r 9). They are pleadings by way of further and better statement of the nature of the claim or defence or further or better particulars of any matter stated in the pleadings. These pleadings may be ordered under 0 6, r. 5 of the Code of Civil Procedure. This written statement of the plaintiff is called a "replication" and that of the defendant is called an "additional written statement."

Thus, according to P C. *Mogha* "Pleadings are" "statements in writing drawn up and filed by each party to a case, stating what his contentions will be at the trial and giving all such details as his opponent needs to know in order to prepare his case in answer," together with such oral admissions and denials of parties as the Court records under *0, 10, r. 1.*

Object of Pleading :—The whole object of

pleading is to narrow the parties to definite issues anp to diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing. **Per Jessel, M. R, in Thorp v. Holdsworth (1876) 3 Ch. D. 637,** 639. Therefore they should be concise and precise, and should not contain vague and general statements. The intention being, that before the case comes up for trial both parties should know from the pleadings as to what are the real points to be discussed and decided. It is essential that the matter submitted for decision should be clearly ascertained to be able to give a decision on any matter in controversy between the parties to a suit or proceeding. Therefore O. 10, r. 1 C. P. C, provides that on the first hearing, the Court shall ascertain from each party whether he admits or denies such allegations of facts as are not expressly admitted or denied by him.

Lord Halsbury while delivering the opinion of the Privy Council in *Sayed Muhammed* v. *Fetteh Muhammed* [Mad. 256 (258) ('14) 1 AIR 1914] has stated the purpose of pleading in these words: "Whatever system of pleading may exist, the sole object of it is that each side may be fully alive to the questions that are about to be argued in order that they may have an opportunity of bringing forward such evidence as may be appropriate to the issues."

☞ **Rules of Pleadings:**—In order to secure the purpose of pleading Order 6, of the Code of Civil Procedure has laid down the following fundamental rules:—

State briefly the main subsidiary rules in regard to pleadings. [Ag. U. 38]

1. Every pleading must state facts and not law;
2. It must state all the material facts, and material facts only;

3. It must state only the facts on which the party pleadings relies, and not the evidence by which they are to be proved, and ;
4. *It must state such facts concisely but with precision and certainty.*

Rule 1 **Every pleading must state facts and not law** :—This rule lays down the fundamental principle of pleadings. A pleading must state only facts and not law. The reason is that it is for the Court itself to find out and examine all pleas of law that may apply to the facts and the parties can urge them at any time before *judgment is pronounced.* The facts 'stated' must be material facts i. e, facts upon which the plaintiff's cause of action or the defendant's defence depends. It is necessary that material facts should be stated in their entirety so as to inform the other party what case he has to meet.

It is bad pleading to allege merely that a right or duty exists without setting out the facts, which give rise to the right or create the duty. Thus in a suit for damages for negligence it is not sufficient to allege that "the defendant has been guilty of negligence" without stating the facts upon which the supposed liability is founded Similarly it is not sufficient to say that a plaintiff is entitled to a right of way over the defendant's land he should show how he is entitled to that right, whether by grant, prescription or an easement of necessity, or otherwise. Even that would not be sufficient, he should set out the facts upon which he relies entitling him to the particular kind of easement. *Farrel* v. *Coogan* 12 L. R Ir. 14.

Again it is not sufficient to aver that the defendant did the act complained of "wrongfully, unlawfully and improperly" without stating the

facts upon which he relies as showing that the act complained was done wrongfully. These epithets under the present system of pleadings are useless and redundant. If a person sues for recovery of land he must state the nature and particulars of his title. Similarly, in a suit for pre-emption, the pleading must show the basis of the right. (1933 Lah. 774). It is bad pleading to allege that the plaintiff is entitled to certain money from the defendant. Facts from which claim to the money can be inferred should be alleged, i e, *that the plaintiff had sold some property* to the defendant and the latter has promised to pay him on a certain date but had not paid it. Again it will not be sufficient to say that A a Mohammadan has made a gift of his property to the plaintiff. The plaintiff must allege how the gift was made, accepted and how the possession was given, because these are the facts which constitute a valid gift under the Mohammadan Law and to allege the gift merely would be to state a conclusion of law from facts which are not stated.

Similarly, in a suit for the price of goods sold to the defendant, he is not entitled to plead that he is not liable. He should state that he did not purchase the goods, or the goods were never delivered to him or such other defence illuminating him or exhonorating him, from the liability.

But there are certain **exceptions** to the above rule.

1. In no case should a mere inference of law be pleaded without pleading the facts.
2. The rule against pleading law is restricted to that law only of which a Court is bound to take judicial notice. As the Court does not take judicial notice of foreign law, or of particular customs or usages of trade, they should be pleaded

like any other fact, if a party wants to rely on them. *Vishwa Nath v. Ram Narain*, 1940 (All) 405.

3. Legal pleas to a suit or pleas denying the legal right claimed by the opposite party, e g., of limitation, *res judicata*, estopple, etc., may safely be taken in the pleadings without offending against the primary rule of pleadings.

Rule II. Every pleading should state material facts and material facts only.—The second important rule is that every pleading should contain, and contain only, material facts on which the party pleading relies for his claim or defence. To put in other words, a plaint should contain only those material facts on which the plaintiff relies for his claim, and the written statement should contain only those material facts on which the defendant relies for his defence.

Material Facts.—A fact is said to be "material" if a party is bound to prove it at the trial (unless admitted by the other party) before he can succeed in his claim or defence But the facts which are not essential to establish a claim or a defence are not material. Therefore, the question whether a particular fact is material or not material depends upon the special circumstances of the case.

The rule is divided into two sub-heads

(i) *Every pleading must state material facts only.* All facts upon which the plaintiff's cause of action or the defendant's defence depends: in other words, all those facts which must be proved in order to establish the existence of a cause of action or defence. A material fact is one without the proof of which the plaintiff cannot succeed. Thus, in a suit against surety it is not necessary

to allege prior notice of the non-payment by the debtor. But in a suit for injunction it is necessary to plead that a plaintiff "threatens and intends" to repeat the illegal act Similarly in an action on libel the actual libelous words used must be pleaded because it will not be sufficient to plead their general effect.

(*ii*) **Every pleading must contain all material facts. Hence no facts which is immaterial should be pleaded.** All facts which, though not necessary to *establish the cause of action or defence*, but which the party pleading them is entitled to prove at the trial are also material facts. Thus in a suit for damages for breach of contract the cause of action consists in the making of a contract and at its breach. A fact which is necessary to fix the quantum of damages may be proved by the parties at the trial, though the cause of action or the defence does not depend upon it. Such a fact is therefore, also a material fact and must be pleaded in the pleading.

If a party omits to plead a material fact he will not not be allowed to lead evidence to prove that fact unless the Court permits him to amend his pleadings. But the rules stated above are not prohibitory and do not mean that a party must confine his case to the cause of action or defendant's defence as the parties are to plead "the material facts on which the parties rely for their claim.'

Immaterial Facts :—In a suit for ejectment against a tresspasser it is unnecessary to allege that the defendent was asked to vacate the house

and he refused to do so. If words of praise have been used ironically and sarcastically so as to convey, a defamatory meaning, it must be alleged that these words were so intended and understood. In a suit for arrears of rent against a tenant it is not necessary to prove the plaintiff's title to the property as the defendant cannot deny it. Similarly in a suit for damages for assault it is not material to allege the conviction of the defendent for the offence by the Criminal Court.

All these are instances of immaterial facts.

Matters affecting damages.—Damages are of two kinds : (1) General damages and (2) Special damages.

General damage is such as the law will presume to be the natural or probable consequence of the act of the defendant. They need not be specifically pleaded and they need not be proved by evidence, e. g., in an action for libel or tresspass or slander by words actionable *per se*, damages are allowed without any proof.

Special damage is such which the law will not presume to be the consequence of the defendant's act, as it depends upon the special circumstances of the particular case. They must always be alleged as any other material fact and no decree can be passed in respect of them unless the fact of the special damage has been proved by evidence or it has been admitted and also it is shown that the special damage was the direct result of the act of the defendant.

In cases where general and special damages are both claimed, the same rules apply. General damages need not be pleaded and proved but special damages should be specifically pleaded with particular, for instance, in a suit for malicious prosecution, in which both the general damages for loss of reputation and mental pain as well as special damages, like loss of pro-

fessional business and cost of defence are claimed the latter has to be proved specifically while the former need not be.

Facts in aggravation of Damages.—In England facts in aggravation of damages (facts which tend to increase the amount of damages) are allowed to be pleaded on the ground that they are material facts on which the plaintiff relies for his claim to heavy damages specially. Thus, in a suit for damages for breach of contract to marry the fact that the plaintiff allowed herself to be seduced on the faith of the promise is material **Milington v. Loring** 6 Q. B. D. 190. Such facts are called **matters in aggravation of damages.** On the other hand facts which tend to decrease the amount of damages are known as **"matters in mitigation of damages."** These facts are allowed only to be proved as affecting the amount of damages. According to O. 6 r. 2; of the Code of Civil Procedure all material facts on which a party relies for his claim or defence should be pleaded in his pleading (whether these constitute the cause of action or not) Such facts being material should always be stated in the pleadings of the parties, as O. 7, rule 1 is not prohibitive.

Facts not material at the present stage. No fact should be alleged in the pleading which is not material at the present stage of the action, although it may become material at the later stage for it would be "like leaping before one comes to the stile." In a suit for damages on defamation it would be wrong for the plaintiff to state in his plaint, that the defendant will contend that the words are part of a fair and occurate report of judicial proceedings, but it is not so in a suit on a contract where it is unnecessary to plead that the defendant was of full age when he entered into it. **Wilsingham's Case.**

☞ **Exceptions to the rule** :—But there are

certain exceptions to the general rule that all material facts and material facts only should be pleaded. They are as follows :—

Write a short note on 'Condition Precedent, and state how it is to be pleaded. [D. U. 1949].

(1) **Condition Precedent** :—Order 6, r. 6, C. P. C. provides : "Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or the defendant, as the case may be ; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or the defendant shall be implied in his pleading." The condition may be imposed by statute i. e. notices required to be given under S. 80 C. P. C. and S. 78 Railways Act. When a plaintiff sues in a respresentative character the plaint should under *O. 7, r. 4 state* not only that he has an actual existing interest in the subject-matter but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it. Where a suit is filed by a firm, the plaint need not specifically allege that the plaintiff firm is registered. It is for the defendant to object that the firm is not registered and therefore cannot sue, the condition precedent to its having right to sue—namely its being registered, not having been fulfilled. [1938 Lah. 96]. But it has been held that where a condition goes to the root of the matter, it is safer to plead its performance, e. g., in a case based on dishonour of cheque, it is better to allege notice of dishonour or facts excusing such notice. **Frauhauf v. Grosvenor**, (1892) 61 L. J. Q B 717. Where, however, a plaintiff is conscious that he has not performed a condition and has good excuse for non performance he shall explain such excuse in his pleadings.

2. **Matters of legal presumption** :—The parties need not plead or allege any matter which the

law presumes in his favour or the burden of proof of which lies on the other side, unless the same has first been specifically denied) C O. 6 r. 13. For instance, in a suit on a promissory note or bill of exchange the plaintiff need not allege the consideration (S. 118 Neg. Inst. Act raises a presumption) Presumptions refused to in this exception are only those which the Court is bound to make. Therefore the facts which a Court may presume shall be pleaded.

3. **Matters of Inducement** :—Any introductory matter e. g . description of the parties, what business they carry on, how they are related or connected and other surrounding circumstances leading up to the dispute though not material facts may be pleaded, as they tend to explain the case. But these must be reduced to the possible.

Rule III. **Every pleading must state facts and not the evidence by which they are proved.** These material facts (*Facta Probantia*) facts to be proved on which a party relies must be stated in the pleadings. The evidence or the facts by means of which they are to be proved (*facts probanda*) should not be stated in the pleading. They are not the facts in issue but only relevant facts which will be proved at the trial in order to establish the facts in issue.

So a pleading should not contain facts which are merely evidence to prove material facts. Thus, estoppel by admission cannot be properly set out in a plaint as it is a rule of evidence. 1921 Ind 159. An offer without prejudice should not be pleaded in the pleading. 12. **B. L. A. 19.**

Illustrations

(1) Where an insured Co, wanted to defend the claim on a policy of Insurance where there was a clause that the Co., shall not be liable if the policy-holder "died by his own hand", alleged in

defence that the policy holder had for weeks been in a moody miserable state, that he had brought a pistol, before his death and that a letter to his wife was found on him stating that he intended to kill himself. It was held that all these facts were merely evendentiary facts and should not be alleged in pleadings, but it was sufficient to say that the accused "died by his own hand". (Broradalte v. Hunter Mau and Gr. 639).

(2) *In cases where time is not the essence of the contract* it would be sufficient to allege that the work was done within a reasonable time. It would not be proper to allege that the weather was bad or that the men had struck up the work or there was any other reason why the contract had taken a long time to be completed. All these is the evidence by which it has to be proved that the time in fact occupied was reasonable.

(3) In a suit for damages resulting from defendant's wrongful act, the fact establishing the connection between the damage and the wrongful act should not be pleaded It will be sufficient to allege the wrongful act, that the defendant caused it, and that the plaintiff suffered damage thereby.

(4) Previous admissions of the opposite party should not be pleaded. Admissions are certainly the best evidence of the facts admitted but they should find no place in a pleading. For example, in a suit for the recovery of the price of articles purchased by the defendant from time to time, the various transactions of the defendant are to be pleaded. If the transactions are entered in a *Bahikhata* the entries need not be referred to in the pleadings. If, similarly when balances have been struck and signed by the defendant they need not be pleaded, as they are mere admissions of correctness of the previous items and therefore mere evidence, unless they are set up as acknowledgments to save limitation, or they were coupled with

fresh premises to pay, and are themselves made the basis of the suit.

☞ **Practicle application of the rule.**

There are three practical applications of the rule :—

1. **Commission of Mind** In suits whereever it is material to allege notice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred O. 6, r. 10. These circumstances are no more than evidence of these facts.

Write notes on : Malice, Fraudulent intention and knowledge. State how they are to be pleaded. [D. U. 1949].

Malice—Thus in a suit for malicious prosecution it will be sufficient to allege in the plaint that the defendant was actuated by malice in prosecuting the plaintiff. No facts or circumstances from which the plaintiff has drawn this conclusion need be pleaded.

Fraudulent intention.—In suits on the basis of fraud, the allegation of fraud must be specific.

Knowledge.—Where presence or absence of knowledge is a material factor in the case it must be specifically alleged e.g., where insanity is set up as a defence, it must be alleged and proved.

2. **Notice.**—Under Order 6 Rule 11, of the Civil Procedure Code. 'Whenever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material. **Moga on Law of Pleadings Page 35 Ed. 1955.** In many cases notice has to be alleged as a material fact.

3. **Implied contract or relation :**_ When any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact and to refer generally

to such letters etc. without setting them in detail, O 6, r. 12. The reason of the rule is that what is re 'ly material is the effect of the letters etc., and the letters etc., are only the evidence of the effect.

RULE. IV Every pleading must *state such facts concisely* but with perecision and certainty. In every pleading, material fact must be stated precisely, coherenly and as briefly as is consistant with clearness and must be drafted with sufficient definitness to enable the opposite party to understand the case he is called upon to meet. The pleadings shall, when necessary, be divided into paragraphs, numbered consecutively. If the facts are lengthy they should be given in all their particulars and prolixity alone will not justify the striking out of pleadings, if the facts stated are all material. O 6, r. 2.

Each party should state his case with brevity which can be attained :—

(i) By omitting all unnecessary facts (ii) By omitting all unnecessary details when alleging material facts (iii) by giving proper attention to the language used in alleging material facts Moga on Law of Pleadings Page 37. Ed. 1955).

The language used should be terse, and a mastery of the vocabulary and grammer at the language in which pleadings are drafted is essential.

How to be precise. As for attaining precession it will be useful to keep in mind the following rules.

(i) Pleadings should be divided into separate paragraphs and one fact should as far as possible be stated in one paragraph

(ii) Repetition should be avoided and particulars which are necessary should be given.

(iii) Where the language of the Act or document

is material it would be better to use the language of the Act or document itself than to express in own words.

(iv) Correct names should be attributed to places and things and should be described by the same name and spellings etc., consistently.

(v) As far as possible plaintiff and defendant should not be referred by their names only. But they should be mentioned as "plaintiff and defendant" and if there are more than one plaintiffs or defendants they should be mentioned as "defendant No. 1 or plaintiff No. 4 as the case may be.

(vi) Avoid pronouns such as he, she, this or that.

(vii) Avoid complex sentences and also describing the facts in passive voice, omitting the nominative e. g., "the defendant's money was paid up" say instead, that, "the plaintiff paid up the defendant's money on — —"

(viii) Allege your facts boldly and plainly, without beating about the bush. "Its" and "buts" should be avoided as for as possible.

(ix) Dates should not be jumbled together. Strict chronological order should be preserved, and this will produce both lucidity and simplicity.

Forms.—Forms of pleadings are to be found in Appendix 'A' of the Schedule to the Code of Civil Procedure. These forms can be adapted with necessary modifications according to the circumstances of each case. The forms, however, are not exhaustive and furnish only a guidance for the preparation of plaints and written statements.

Signature.—Order 6 rule 14 provides that every pleading shall be signed by the party and his

pleader (if any). The rule furthar provides that where the party is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any other person duly authorised by such party. The object of the rule is for preventing disputes as to whether the suit was instituted with, or without, the plaintiff's knowledge and authority.

Explain.—'Verification of Pleading. [D. U. 1955.] [B. U. 1947.]

Verification of Pleadings.—Order 6 r. 15 C.P.C. requires that a pleading should be verified by the party. The law is not so strict, in the matter of verification of pleadings. While every pleading must be verified except when otherwise provided it may be verified by the party or by one of the parties pleading or by some other person proved to the satifaction of the Court to be acquainted with the facts of the case, so that even a stranger to the suit can verify pleadings provided he is acquainted with the facts of the case. It has been further provided by the law that the person verifying must specify by reference to the numbered paragraphs of the pleading, what he verifies of his [illegible] verifies upon infor[illegible] [illegible] true. The verifica[illegible] [illegible] person making it and the date and place when and where it is made must be mentioned. [illegible] of verification [illegible] the statements [illegible] v. Smidt, 22 A 55. In case of a *pardanishin* lady, it should be strictly proved that the pleadings were read out and explained to her.

A false verification is an offence punishable under the Indian Penal Code, and the responsibility of verification is very great and should always be realized.

Pleading by Government and Corporation by whom signed and verified:—In the case of suits by or against the Government, the plaint or

written statement may be signed by such person as the Government may by general or special order appoint in his behalf and may be verified by any person whom the Government may appoint and who is acquainted with the facts of the case.

In suits by or against a Corporation the pleading may be signed and verified on behalf of the Corporation by the Secretary or by any Director or other principal officer of the Corporation who is able to depose to the facts of the case (O 29, r 1.) This rule is, however, only permissive and not mandatory so as to exclude the application of the general rule in O 6 r. 14, C P. C, which applies to companies as well as to individuals.

CHAPTER II

PARTICULARS

☞ **Meaning and object** :–The details of the case set up by a party to a suit are known as particulars. Although pleadings must be concise, all the necessary particulars must be embodied in the plaint In every pleading certain details are necessary to ensure clearness and to prevent the other party from being taken by surprise. In the words of **Cotton L. J.** "It is absolutely essential that the pleading not to be embarrassing should state facts which will put the other parties on their guard and tell them what they have to meet when the case comes on for trial". The [illegible] the generality of [illegible] party to know acc[illegible] brought against him [illegible] to limit and define the issues to be tried. What particulars are to be stated must depend on the facts of each case. **Phillips v. Phillips** 4. Q. B. D. 127. But while the plaintiff or the defendant is entitled to be told any and every particular which will enable him to

Write a note on Particulars (Poona.U. 52)

properly prepare his case for the trial, neither party is entitled to pry into the brief of his opponent or to find out what is to be the evidence which is to be produced at the trial. As a general rule particulars must be given but not such as will amount to discovery. If the particulars are such that the plaintiff ought to give, he cannot refuse to do so merely on the ground that his answer will disclose the names of the witnesses he proposes to call.

Illustration.

A deals in drugs bearing the registered trade mark "Herbaline." B uses the word "Herbaline" on drugs manufactured by him. A sues B for infringement of his trademark, alleging in the plaint that the use of his trademark by B is calculated to induce and had infact induced "diverse persons" to purchase B's goods as and for A's goods. B applies for particulars of the names and addresses of the "diverse persons." B is entitled to the particulars, for the names in this case form part of the material facts which constitute A's case. The whole question in such a case is, has the defendant induced diverse persons to buy his goods as and for those of the plaintiff (**Humphires v. Taylor Drug Co.** 39 C. D. 693).

When are particulars to be given in the pleadings (D. U. 51). What is the effect of not giving particulars? D. U. 1951.

☞ Order 6, rule 4 C.P.C. lays down that in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence and in all other cases in which particulars may be necessary, these shall be stated in the pleading with dates and items if necessary. Order 6, rules 5 provides that if a party omits to give in his pleading any particulars which he ought to have given according to rule 4, the other party may apply for further and better particulars of any matter stated in the pleading; and the Court will order the opposite party to furnish particulars of what he has pleaded insufficiently or vaguely and the party at fault may have to

pay costs. The distinction between particulars of a material fact, and material fact is very important and should not be lost sight of. "Material fact" is an essential element of the cause of action, and if any material fact is omitted the plaint is bad and can be rejected under Order 7, Rule 11 (a) C.P.C. "Particulars" are the details of a material fact and an omission to give such particulars does not entail rejection of plaint. But where a plaint contains averments indicating with reasonale definiteness the nature of the claim, the claim cannot be defeated by a small error in one particular (*A. I.* R. 28 *Mad.* 940.)

Misrepresentation :—In case of misrepresentations more than one, the party should state the date of each representation and in case of oral misrepresenation the occassion must be stated.

☞ **Fraud** —The plea of fraud is to be raised most precisely and carefully. O. 6, r. 4, C. P. C. makes it incumbent on the party pleading fraud to state the particulars with dates and items if necessary and where a party omits to give the necessary particulars, the Court has the power under O. 6,r. 5 to require a further and fuller statement of particulars. The allegation of fraud must be *clear, definite* and *precise*; otherwise the Court will refuse to take notice of it and the effect will be the same as if the plea had not been arised at all. It has even been held that a plaint based on fraud of which no particulars are given does not disclose a cause of action and is to be rejected. [36 Cal. 134].

How is fraud to be pleaded ? [D. U. 1950]

Thus, where the plaintiff seeks to avoid the effect of limitation on the ground that the facts giving him the right to sue were kept out of his knowledge by the fraud of the defendant must state *how* he was kept out of such knowledge and by what fraudulent acts and how and when he came to discover the facts. [1916 Cal. 120]. It is essential to give a precise statement of the nature of the

fraud, for a party pleading one kind of fraud cannot be allowed to prove fraud of another kind.

When a plea of fraud is raised, the date, and the place of the fraudulent statement, the party to whom it was made, the purport of the statement, and the way in which it was intended to deceive must be given and should be further stated that the party concerned was in fact deceived.

But the strict rules as to particulars of fraud are relaxed in certain cases, particularly in the cases where *pardanshin* ladies are induced to part with property, and the circumstances are such that no reasonable man would have entered into that kind of transaction. In such cases, the thing speaks for itself (*res ipsa loquitur*) and it is clear that there must have been some fraud somewhere. Suit based on such a transaction will not be dismissed, if fraud of one kind is alleged and that of another kind is proved [1922 Cal. 203].

Undue Influence.—Undue influence must be pleaded with precision detailing particulars of it, and the person pleading it must prove that another person was in a position to dominate his will and that he actually did so (A. I. R. 38 Nag. 391) and a mere suspicion will not suffice. But where the facts on the record justify an inference of undue influence, the absence of an allegation to that effect is not fatal to a relief on that ground provided there is no surprise to the defendant. Where a transfer is challanged on the ground of unsoundness of mind the question of fraud cannot be gone into : 182 Ind Cas 452.

Breach of Trust :—A plaintiff suing on the basis of a breach of trust must give particulars of acts constituting breach of trust

Wilfull default. As a rule, in every case, an order charging wilful default must be based upon

a charge of wilful default in the pleadings. But a case of a mortgagee is an exception to this rule.

Other cases in which particulars may be necessary.

(*i*) **Suits for Accounts** :—It is not sufficient to allege tha
The facts
be given,
agent, or a mortgagee in possession. It must also be stated when and in what manner the defendant became an accounting party, e. g., if he is an agent, the date on which he was appointed and whether he was appointed verbally or in writing and if he is a mortgagee, the date of the mortgage deed should be given.

(*ii*) **Adoption.** Particulars of the persons taking
adopted and his
ınd the person to
d be given. If the
adopter is a widow, it must be stated whether the adoption was made by the authority of the husband or with the consent of *spindas* or without such authority or consent. If the authority was given in writing, the particulars of the document should be given.

(*iii*)
the pleac
the name
in writing or verbal. If it is an implied agreement, it should appear from what facts or circumstances it is to be implied.

(*iv*) **Adverse possession**:—It is not sufficient to state that the party has remained in adverse possession for 12 years. The facts showing how and when adverse possession commenced should be specifically alleged.

(*v*) **Alienation**:—Where a Hindu son seeks to set aside an alienation made by his father on the

ground that the debt was made for immoral or illegal purpose, it is not sufficient to allege merely that the debt was so contracted. Particulars of the immoral purposes and how the debt was connected with the immoral pursuits of the borrower must be given. In the case of illegal purpose, it should be stated in what way the money was applied to illegal purpose and when and to whom money was paid. Where it is alleged that the debt was contracted to pay for gambling losses, particulars of the gambling should be given.

(vi) **Antecedent Debt**—Where legal necessity or antecedent debt is pleaded to justiy an alienation by a Hindu father, particulars of the debt, the name of the creditor, the way in which it was secured should be given.

(vii) **Breach of contract** :—Where a contract is set up, it's particulars should be given stating it's date. It should also be stated whether it was in writing, oral or implied.

(viii) **Custom**.—Full particulars of the custom showing its incidents and details should be given. A custom different from that set up cannot be allowed to be proved. It should be stated that the custom is reasonable, certain and immemorial and has been followed without interruption.

(ix) **Cruelty** :—Details of the acts alleged amounting to cruelty together with the date and place must be given.

(x) **Easement** :—Where a suit is based on easement, the nature of the particular easement claimed how it arose and the manner (whether by grant or by prescription) in which the right has been acquired should be pleaded. If it was an easement acquired by prescription it must be specifialy alleged that the right was exercised for atleast 20 years ending with two years of the suit, without interruption and as of right.

(xi) **Estoppel** :—In order to bring about an estoppel, the words used must have been "unambiguous and precise, The words used ought there fore, to be pleaded or the conduct by which the party relying on the estoppel was misled, and the manner in which on account of the representations the party misled acted to his detriment.

If the particulars are wrong they can be amended by permission of the Court.

(xii) **Misconduct** :—Where a party, whether a plaintiff or defendant, pleads misconduct on the part of the opposite party, specific acts of misconduct should be set out.

(xiii) **Nuisance** :—In a suit for public nusiance the plaint should state full particulars of special damages claimed.

(xiv) **Relationship** :—Guardianship and ward, and in any case in which, for all practical purposes the relationship of parents and child exists, the facts constituting the allegd relationship must be pleaded.

(xv) **Suits for possession of land** : - The plaintiff must give the nature and particulars of his title showing his right to immediate possession in suits for possession of land. If the plaintiff claims as an heir, he must show how he claims as an heir. The defendant who pleads title by purchase should give particulars of it.

(xvi) **Special damage** :—The grounds upon which "special damage" is claimed, and the basis on which it is calculated, must be stated.

If the particulars are wrong they can be corrected by an application for permission to amend them.

Form of Particulars. Particulars should always be given in the pleadings. When the particulars are short, they may be stated along with the fact, but they should not be mixed up with the allega-

tions of facts. If they are long, they may be given in a seperate paragraph. When they are too voluminous they may be annexed thereto and the fact stated in the plaint.

The particulars are part of the pleadings and the opposite party should plead to these particulars.

CHAPTER III

BLTERNATIVE AND INCONSISTENT PLEADINGS

Write note on "when are inconsistant pleadings, allowed? [D U 50, 51]

There is nothing in the Code of Civil Procedure or any other law for the time being in force to prevent any party to the suit from setting up two or more inconsistent sets of materal facts and claiming relief thereunder in the alternative. But the right to raise alternative or inconsistent pleas is subject to the provisions of O. 6 r. 16 and if they will lead to the prejudice and embarassement of trial, they cannot be allowed. For instance, a plaintiff may sue for possession of a house claiming ownership, either as the adopted son or under a will or gift.

Explain "inconsistent pleas" and "alternative defences." [D. U. 1955]

In *Bhutan Mohini Dasi V Kumud Bala Dasi AIR.* 1924 *Cal.* 467, their Lordships of the Calcutta High Court observed, "It may be conceded that the Code of Civil Procedure does not prohibit inconsistent pleadings and that there is nothing to prevent either party from setting up two or more inconsistent sets of material facts and claiming relief thereunder in the alemative. A plaintiff may relay upon several different rights alternatively although they may be inconsistents."

But if it is intended to set up alternative or inconsistent pleas, the facts should be distinctly stated so as to show on what alternative facts each of the relief sought is founded. Where a party has taken up a certain position and the Court has held that position to be correct, it is not open to the

party to take up subsequently an inconsistent position.

General principle. There can be no objection to preferring alternative and inconsistent claims or raising inconsist [illegible] inconsistent claims or inconsistent pleas which are based on facts and which are so inconsistent that the evidence required to prove one fact is destructive of the other fact, should be discouraged, except when the facts are not with in the personal knowledge of the party pleading them.

State the law relating to alternative pleadings distinguishing the same from the law relating to inconsistent pleading and give illustrations of both (P. U. 1949)

Even when in theory inconsistent pleadings are allowed, a party would be illadvised to raise them, for a judge is likely to come to the conclusion that a party who has to rely on inconsistent statements has a case of very little merit. It is a great risk for a party to take, for, if the pleas are contradictory they work out their own retribution by disproving each other to the extent of that contradiction. Where however a party is, from obsecurity or from complexity of facts, in honest doubt as to the relief available to him, inconsistent claims may be entertained (**164 Ind C. 804.**)

Instances of alternative pleas

(1) A defendant may plead in a suit on a bond that he did not execute it, and in the alternative that the claim is based by limitation (**Official Assignee v. Bidya 145 I. C. 181.**

(2) In a suit for pre-emption a defendant may plead estoppel in addition to a plea denying the custom of pre-emption. (*1950 Tr C.* 66).

(3) A plaintiff in an ejectment suit may claim a decree on the ground that the defendant is a tenant under the plaintiff or in the alternative that he is a tresspasser.

5. Discharge of mortgage and, in the alternative right of redemption.

6. Grant of perpetual tenancy and in the alternative, acquisition by adverse possession.

7. Plea that the land is not *service inam* and in the alternative willingness to perform the service.

Instances of alternative and inconsistent pleas that have been disallowed.

1. The plea of payment or forgery of the bond or that the defendant never borrowed the money.

2. Denial of contract or in the alternative that it was intended to be a wager.

3. The plea that the sale deed is forgery or in the alternative no consideration is received, is not allowed.

4. Rights of public and private way cannot be pleaded together. **(1931 Nag. 187).**

Representative of a party who was not party to the proceedings however may raise such pleas.

CHAPTER IV

VARIANCE BETWEEN PLEADING AND PROOF

As a general rule, a party is bound by his pleading and should not be allowed to contradict the facts stated therein, or to deviate from thereof to succeed on a case not made out in his pleading. He must be held to the claim or defence set up by him in his pleading and cannot be allowed to succeed on a case inconsistent with that in his pleadings, although he could, if he chose, allege that other ground of claim or defence in his original pleadings. The reason for the rule is that the party will be seriously prejudiced if his opponent is allowed to substantiate a case different from that which he

pleaded. Their Lordships of the Privy Council in *Eshen Chander v. Shama Charan*. (11. M. I. A. 7). observed as follows :

"This case is one of considerable importance, and their Lordships desire to take advantage of it for the purpose of pointing out the obsolute necessity that the determination in a cause should be founded upon a case either to be found in the pleadings or involved in or consistent with the case thereby made. It will introduce the greatest amount of uncertainty into judicial proceedings if the final determination of cause is to be founded upon inferences at variance with the case that the plaintiff has pleaded, and, by joining issue in cause, has undertaken to prove. They desire to have the rule observed, that the state of facts and equities and ground of relief originally alleged and pleaded by the plaintiff will not be departed from". The basis of this rule is that no party should be taken by surprise by the change of case introduced by the opposite party. A party cannot be allowed to abandon his own case, adopt that of the defendant and claim relief on that footing where the latter is prejudiced by such course.

A court should not allow itself to be persuaded to enter into a roaming enquiry or to undertake to decide points on which the party adversely affected had not been given opportunity to put forward its defence as to adduce evidence (1947 *Oudh* 22).

Thus in *Rudra Pratap's* case, where the defendant lady had denied the geniunness of the pronote, admitted her signatures while giving evidence at the trial and sought to give explanations as to how her signatures were obtained. The Chief Court of Oudh strongly deprecated it.

In order to Judge whether there has been variance in the pleadings and the proof, a Court should not look merely to the wording of the plaint

but to the manner in which the case was fought out. Thus, where a plaintiff alleged contract of a particular date he was not permitted to prove a contract of a different date. *Jughal Kishore* v. *Paras Lal* 1930 *Lah.* 325.

But it may be observed that every variance between the pleading and the case set up at the trial is not necessarily fatal. The test to be applied in very case is, that the opposite party should not be taken by surprise *Dommu* v. *Narasingha* 1940 *Pat.* 187, and where there has been no surprise and each party knew the other's case, justice will be better done by deciding the case on the merits as presented by the parties and the technical rule of law should not be allowed to stand in the way of justice. Thus, where evidence was led on a plea which was not alleged in the pleadings and [illegible]

The rule is however, applicable to questions of facts and not to pure questions of law arising out of facts alleged and proved. Thus pleas of juridictions, limitation, *res judicate*, estoppel, adverse possession, illegality of consideration, etc, etc., can be raised at a latter stage even though not alleged in the pleading, but facts in support of the same have been brought on record.

Subsequent Event. Ordinarly the courts take no notice of events which occur after the institution of the suit and the decree is passed with reference to the date on which the suit was instituted as nothing arising after suit can create a new or complete, then incomplete cause of action. But subsequent event may be considered in suitable case to avoid multiplicity of proceeding or when the orginel relief claimed has by reason of change in circumstances become inappropriate. The Patna High Court has

ruled that it is the duty of the court to mould its decree so as to suit the altered circumstances Ram Chandra v. Mst Bibi 1946 Pat. 396.

CHAPTER V

REVISION AND AMENDMENT OF PLEADINGS

Amendment of the pleadings means and implies an alteration in the pleadings by way of addition, elimination and substituting of the new facts.

The Code of Civil procedure provides for the following provisions for the revision and amendment of the pleadings:—

Write a note on amendment of pleadings [D. U. 52.]

(*i*) O. 1. r. 10 provides for the amendment of a plaint by adding such parties, at any stage, whose presence is necessary for proper adjudication of the matter or by striking out the name of the party who has been wrongly impleaded or whose presence is not necessary.

(*ii*) **Compulsory amendment** O. 6 r. 16 provides for the striking out or amending any matter in the pleadings which may be unnecessary or scandalous or which may prejudice, embarass or delay the fair trial of the suit. Thus, under this rule the party can get the pleadings of his apponent amended.

(iii) Voluntary amendment. (O. 6 r. 17) This is the most important provision in C. P. C. as regards amendment. According to this rule any party at any stage of the case can amend its own pleadings.

Besides the above three provisions for the amendment of the pleadings, the Court has inherent powers under Sec. 151 C. P. C. to allow the amendment in the pleadings.

There are also other provisions in C. P. C. which provide for the amendment of the proceedings in

the Court, such as Sec. 152 which provides for the amendment of the judgment decree and orders, Sec. 153, which provides for removing and correcting any defect in the proceedings of the suit. And O. 14 r, 5 which provides for the amendment of issues.

Compulsory Amendment:—

The Court has the power to make a compulsory amendment in the pleadings either on its own [illegible] he opposite party. [illegible] y are defective the [illegible] the better particulars (O. 6 r, 5) or can have the unnecessary or scandalous matter struck off (O. 6 r, 16). In case such a pleadings is a plaint and does not disclose any cause of action, the defendant has another remedy under O 7. r, 11 C. P. C. to have the plaint rejected.

(*i*) Calling for better particulars (O. 6 r, 5).

O. 6 r, 4 C. P. C. provides that in certain classes of cases in which particulars may be necessary, the party should give such particulars in its pleadings. *If* any party omits to give in his pleadings the, particulars which he should have given according to O. 6 r., 4 the other party can apply under O 6 r, 5 and ask for more and better particulars. The object of this rule is to enable the other party to know what case he has to meet and that he should not be caught in a surprise at the trial. This rule has been enacted so that the Court and the parties definitely know the case and no time is wasted for leading irrelavant evidence.

How and under what circumstaces Cau a party get the pleading of the opposite side amended ? (D. U. 1950)

(a) Time Limit There is no time limit for applying for better particulars but it should as a rule be done at the earliest opportunity and within reasonable time after the necessity arises otherwise the court has discretion to refuse to entertain the appli-

cation because of undue delay. (**Gourand v. Fitzerald**)

(b) **Special circumstances.** There are some circumstances in which the party sought to give the particulars cannot give the particulars straight away because the facts are not in its knowledge. In such *a case the proper procedure for the court* is to order the party asking for the particulars to give the discovery of the facts for which he wants the particulars.

(c) **Particulars when refused.** It is not in all the cases that the court can order any party to give the better particulars. There are certain cases in which the particulars need not be given and the court should not as a rule order the other party to give the particulars or amend its pleadings. When the court has already come to a definite finding on a point there is no necessity of the amendment by giving further particulars on that point and the application asking for better particulars should be refused (A. I. R. 1923 Mad 245). Similarly where a matter has been casually stated in the plaint and the defendant is not called upon to meet the case as regards such matter, the *application for better* particulars will be refused [1947 Mar L.R. (civ) 68[. So also where a party applies for better particulars from the opposite party and the particulars are such *that they relate to the matters which the party* applying for the particulars has to prove, the court will refuse to order the other party to amend its pleadings by giving better particulars. **Zierenberg vs Labochere** (1893) 2 Q. B. 183. Where a party has not asked for the better particulars in the trial court, though he had the right to do so, he cannot take up the same point in the appellate court (A. I. R. 1930 Cal 621). Where a party cannot give particulars at the time he is asked to, an order be made to him to give the best particulars he can give reserving him leave to deliver the remaining particulars later. But the particulars delivered should

be the best that the party delivering them can give.

Penalty for not giving particulars If the order for amendment by giving the particulars is not complied with the suit may be stayed, if the defaulting party is the plaintiff and the defence be ordered to be struck off if the defendant is in default [A. I. R. 1941 Nag 223) In the case of default by the plaintiff the court has even the power to dismiss the suit. [A. I. R 1940 Nag : 261]. Once a party has given the required particulars in the Court it cannot withdraw it at any cost.

(ii) Amendment by removing unnecessary and scandalous matter of the pleadings :—

O. 6, r. 16 C. P. C. empowers the court to order *for the striking out or the amending of any matter* which it finds out to be unnecessary or scandalous or which may tend to prejudice, embarass or delay the fair trial of the case.

What is the rule regarding amendment of Pleadings? [Raj.U. 1950]

This rule has been enacted to give effect to a broad principle of law that every party has a right to have the case presented against him in such a form which a man with an average intelligence can understand It enables a party to apply to get *struck out or get amended the pleadings of his* opponent which may be unnecessary or scandalous. Where the whole of the pleadings are objectionable the whole pleadings will be ordered to be amended or struck off but where only a part of it is objectionable and such part is severable from the other part, such part will be ordered to be, expunged or amended and if such a part is not severable from the rest, the whole of the pleadings will be ordered to be struck off or amended. Though the power given to the court under this rule is discretionary, it should be exercised with a great caution (1925 Cal : 860). The power given to the court has

Can a party apply for amendment *of his opponent's* pleading? [Ag.U. 1940]

to be exercised only in the cases where some substaintial objection to the pleadings or some embarassment is shown. The leading case on this point is **Knowles v. Roberts.** [(1888) 38 Ch : D. 263] in which Bowen L. J. observed, "It seems to me that the rule that the court is not to dictate to the parties how they should frame their case, is one that ought always to be preserved sacred. But that rule is, of course, subject to this modification and limitation that the parties must not offend against the rules of pleadings which have been laid down by law, and if a party introduces a pleadings which is unnessary and tends to prejudice, embarass and delay the trial of the action, it then becomes a pleadings which is beyond his right."

As to what is unecessary or scandalous has to be seen from the form in which the pleadings of the parties are putforth. It has been held in the **Knowles** case mentioned above that the pleading of any allegation will not be struck out merely because it is unnecessary. It should also be shown in such a case that besides being unnecessary it is also scandalous or embarassing. Thus, where the plaintiff alleged in the plaint improper motives to the defendant and also charged him with dishonest conduct, it was held that besides it being unnecessary it was also embarassing to the defendant and such part should be expunged from the plaint. **Davy** vs. **Garrct**[**(1878) 7 Ch : D. 473.]**

It is a cardinal principle of law that no person has a right to make any allegation in the pleadings merely for the purpose of abusing or prejudicing the opposite party. If such indecent or offensive matters in the pleadings have nothing to do with the matters in issue between the parties and that *no relief* in respect of these matters is claimed, such indecent or offensive matters are not only unnecessary but scandalous also and should be ordered to be expunged from the pleadings.

Illustrations

(a) A sued B and alleged in the plaint dishonest conduct against B but did not claim any relief on this ground. Held that the allegations about dishonest conduct be expunged as they are scandalous and embarassing. **Brooking v. Mandslay (1886) 55 L. T. 343.**

(b) A, the wife sued her husband B for rectification of her marriage-settlement and made a statement in the plaint that she declined to live with her husband because he had committed an assault on a young girl. The allegation was held to be scandalous and not one covering the matters in issue and was ordered to be struck out. **Coyle v. Comlng (1879)** 40 *L. T.* 455.

(c) Where in a memorandum of appeal submitted to the High Court, the appellant made an allegation that the judge was partial, it was ordered that this allegation be expunged (*I.L R.* 22 *Mad:* 155).

But an allegation which is necessary or relevant to the issues cannot be struck out even though it is held to be scandalous because such an allegation will be material for the decision of the case. What the court has to see in such a case is whether the allegations alleged to be scandalous are relevant to the issues in the suit. If they are relevant, they cannot be expunged and the court does not have to go into the question of their truth or false-hood at that stage.

As to whether a particular allegation,, in the pleadings will tend to prejudice, embarrass or delay the fair trial of the suit, the circumstances of each case have to be gone into. A party cannot give a pleadings which is unintelligible or ambigious. It is not necessary that a pleading is embarrassing merely because it contains inconsistent or irrelevant allegations. But a pleading which is extremely long, involved and impossible to understand and does not raise any fact which would show that the judge

What are the powers of a Court to allow amendments of pleading? [D U. 1949, 51].

had jurisdiction over the matter, the plaint should be struck out and amendment be made in the plaint. (114 I C 906).

Voluntary Amendment of Pleadings.

The powers of the Court to allow an amendment in the pleadings is laid down in O. 6, r 17—

State, how and under what circumstances can a party amend his own pleadings? [D. U 1950]. [Ans See O. 6 r. 17]

"The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties"

The object of this rule is to enable the real question in issue between the parties to be raised on the pleadin s for the purpose of proper adjudication between the parties. The rule permits amendment at any stage and it does not matter whether the original ommission arose from neligence or carelessness, for the courts exist for the determination of the rights of the parties and not for punishing them for their mistakes in the conduct of cases

What are the principles on which the Court will either grant or refuse leave to a party to amend his own pleading? [Bom. U. 1945, 46, 52]. [Poona U. 1952] [Kar. U. 1949, 50]

But such amendments are allowed only when they occasion no injury and cause no injustice to the opposite party or where they can be sufficiently compensated for by costs or other terms to be imposed by the order.

General principles regarding grant of leave to amend:— P. C. Mogha has stressed three principles on which the discretion vested in Courts in granting leave to amend is to be exercised They are—

(1) The Court should not allow a party to raise a new case.

(2) It should strive to allow amendments in all cases to raise a new case where the opposite party can be compensated by costs and

(3) It should not permit an amendment by which any legal right acquired by the other party is taken away.

Bramwell, L. J., in **Tidesley** v. **Harper** (1878) 10. Ch. D. 393 ; observed :—

"I have had much to do in chambers, with application for leave to amend, and I may perhaps be allowed to say that this humble branch of learning is very familiar to me. My practice has always been to give leave to amend unless I have been satisfied that party applying was acting mala-fide, or that, by his blunder he has done some injury to his opponent which could not be compensated by costs or otherwise".

Write a short note on : Amendment of a suit. [Kar.U.1951]

The power given to the courts is entirely discretionery. The discretion has to be used judicially on a consideration of the special circumstances of each case It is worthwhile to reproduce here the observations in the case of **Clarapede** *v.* **Commercial Union Association** [(1882) (32. W. R., England 262)].

"However negligent or careless may have been the first ommission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs." It is immaterial whether the error sought to be amended was accidental or not.

In Cropper *v.* **Smith** [(1884) 26 Ch. D., 700)] **Bowen L. J.** observed :

"I have found in my experience that there is one panacea which heals every sore in litigation, and that is costs".

The rule quoted obove establishes the principle that an amendment can be allowed by the Court at
[illegible] it
[illegible] as
[illegible] ated

by costs, and (*ii*) it is necessary for the purpose of determining the real questions in controversy between the parties.

The Court has also got the power, when a party desires amendment in his opponent's pleading, to order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarass or delay the fair trial of the suit. (*ibid*).

The party applying, however, must not be acting mala-fide; the application to amend must be bonafide and made in good faith. In a suit on a promissory note the plaintiff may amend his plaint and sue on the orignal consideration.

Leave to amend may be granted to both parties, i. e. to amend either the plaint or the written statement.

Leave to amend when refused.

Leave to amend should be refused in the following cases:—

1. Where the proposed amendment is not necessary for the purpose of determining the real questions in controversy between the parties, as where it is—

(i) merely technical, or

(ii) useless and of no substance

2. Where the plaintiff's suit would be wholly displaced by the proposed amendment.

3. Where the effect of the amendment would be to take away from the defendant a legal right which has accured to him by lapse of time.

4. Where the amendment would introduce a totally different, new and inconsistent case, and the application is made at a late stage of the proceedings.

5 Where the application for amendment is not made in good faith.

Kinds of amendment of pleadings.

There are four kinds of amendment of pleadings.

1. **Formal amendment** e. g., misdescription of parties or the property in suit, defect or omission of signature of verification in a pleading, slips of pen, mistake in accounts etc., should invariably be allowed. *Section* 153 C. P. C *confers widers power* on the court than O. 16. r. 17 C. P. C. The former (S 153) allows amendment "at any time" even at the time of execution of the decree, while the powers under O. 6 r. 17, can not be exercised after the final determination of the proceeding in the case.

2. **Amendments as to substance:**—Amendment as to substance in the pleadings will be allowed on the principles already discussed above.

3. **Amendment as to relief:**—The amendment of a plaint by adding a new prayer may or may not convert the suit into another of a different and inconsistent character. If the amendment converts the suit into another of a different and inconsistent character, it will not be allowed. If the amendment does not convert the suit into another and of a different and inconsistent character, it may or may not be allowed at the discretion of the Court. In the exercise of this discretion, the Court will not allow an amendment, if the application for amendment is made at such a late stage of the proceedings that, if allowed, it would create a necessity of practically trying the [illegible]
Mad. 255,
Thus a mo [illegible]
property may be allowed to amend the plaint by asking merely for a simple money decree against the mortgagor, or a vendor suing for recovery of unpaid

purchase money may claim it by enforcement of a charge to bring the suit within 12 year's limitation But where owing to altered circumstances the relief claimed becomes inappropriate, Court may mould the relief according to altered circumstances.

4 Amendment as to parties: · See chapter VII

Amendment may be allowed at any stage of the proceedings:—Leave to amend may be granted at any stage of the proceedings, before or at, or after the trial, or before the final decree in the case, or in appeal or in second appeal or in revision. In **Mohummad Zahoor v. Rutta,** [11. M I. A. 468] the plaintiff was allowed to amend his plaint even in appeal before the Privy Council.

Necessity for Amendment

Amendments are sometimes necessary for various causes. Fresh information sometimes comes to hand, documents the existence of which was unknown are disclosed, and at others amendment they become necessary by subsequent events. Ordinarily no notice should be taken of events happening after the institution of the suit, and the claim of the plaintiff is determined with reference to the date on which the suit was instituted. But there is nothing to prevent amendment so as to base a claim on a cause of action arising after institution of the suit, and where the original relief has, by change of circumstances, become inappropriate, or it is necessary to have a decision of the Court on the altered circumstances, in order to shorten litigation or to do complete justice between the parties, a plaint may be allowed to be amended so as to base a claim on events happening after the institution of the suit." **Mogha on** Law of Pleadings Page 140, Ed. 9th. For example, if pending a suit for partition by a plaintiff against his two brothers, one of them dies, the plaintiff can amend his plaint and claim a half share instead of one third

How is amendment made.

In cases where the Court orders an amendment either on the application of the opposite party or *suo motu*, either under O. 6, r 16 or under O. 6. r 17 amendment is ordinarly made by one of its officer under the signatures of the presiding judge. But where, the amendment has to be made by the party himself, e. g., when verification of the plaint is wanting, it has to be done by the party concerned himself, either by calling him in Court and having the amendment made, or returning him the pleading with instructions to file it after amendment within a fixed time. A Court can return a pleading for amendment when necessary. S. 151 C. P. C. confers inherent powers on the Court to do so. Pleading as they stand after amendment should be taken into consideration.

Where a plaint has been amended, the defendant also gets the right to file an additional written statement and if the written statement is allowed to be amended, the plaintiff gets the corresponding right.

Amendment is allowed on "such terms as may be just". Payment of costs is. generally the condition on which amendment is allowed.

Failure to amend after order.

According to O 6., r 18 of the Code if a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such 14 days, as the case may be, unless the time is extended by the court." The result of such failure will be that the case will be continued for tial on the original pleading But the failure does not render the suit for dismissial.

CHAPTER VI

FRAME OF SUIT

One of the most important factors in drafting the pleadings is the "Framing of Suit." This term includes the preparing of the plaint and what it should contain. Again in preparing a plaint it is very necessary that it should have a 'cause of action'. If the plaint does not show any cause of action the suit is liable to be dismissed under O. 7, r. 11 and the opposite party has a right to get it, rejected even without filing a written statement.

'Cause of action' means every fact which the plaintiff must prove in order to succeed in his claim. The next point which is very important in drafting the pleadings is the 'relief', which is always ancillary to the 'cause of action'. So, if in a case only one relief can be claimed it should be claimed, but in cases, where the 'cause of action' gives rise to many and different reliefs, all the possible reliefs should be claimed in the suit.

Then there are many factors which have to be seen before giving the 'cause of action' in the suit. It has to be seen that there is a 'joinder' of causes of action and that there is no misjoinder or nonjoinder of causes of action.

It is the fi[illegible]
should be so fr[illegible]
final decision [illegible]
prevent furthe[illegible]
principles are [illegible]
object of the rule is that all the matters in dispute between the parties and relating to the same transaction should be disposed of in one suit and that further litigation on the same cause of action between the parties is prevented. Further, O. 2, r. 2 provides that where the plaintiff has sued on a certain claim and has either omitted to sue in respect of or intentionally re-

linquishes any portion of his claim he shall not afterwards be allowed to sue in respect of the portion so omitted or reliquished. O 2 r, 2 sub rule (3) also provides "A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs but if he omits except with *the leave of the court to sue for all such reliefs* he shall not afterwards sue for any reliefs so ommitted" The effect therefore of not joining of the causes of action is that the plaintiff is debarred from bringing a fresh suit in respect of a portion of a claim for which he had a right but did not sue. Besides O 2 r,2 C.P C, there is an other penalty provided by Exp. IV to Sec. 11 of the C P. C which provides that any matter which ought to have been made a ground of attack or defence in a former suit will be deemed to have been a matter *directly* and *substantially in* issue in such suit and will not be allowed to be reopened in a subsequent suit between the same parties although it was not actually adjudicated upon in the former suit. According to this, a suit brought on a ground which could have been taken in the previous suit between the same parties, will be barred by the principles of *'res judicata'*.

The plaintiff can however with the leave of the Court relinquish any portion of his claim in order to bring the claim within the jurisdiction of a Court, and he can bring about a suit in respect of the reliquinshed portion of the claim before the Court which has jurisdiction to try the other portion [(O. 2 R. 2 Sub Rule (1)] But without the leave of the Court the plaintiff cannot reserve to himself the right by merely alleging in the plaint, that, he will sue for the ommitted portion later (1917 Cal. 568). Similarly, if the plaintiff would be embarrassed in his suit, as for instance, where the evidence in support of one ground of his claim is destructive of the other ground, he is not bound to bring into the same suit, both the grounds

of his claim (I L. R. 31 Mad 385). An other thing which has to be seen is that in order that the plaintiff is barred from bringing a suit under O 2 R. 2 C. P C, the plaintiff must have been aware of his right to the portion ommitted by him at the time of his first suit and on which he subsequently wants to sue (1944 *Oudh Weekly. Notes* (*H. C.*) 23). The previous suit in order to be a bar to a subsequent suit should have been dismissed on merits and if it has been dismissed merely on a technical ground, the bar under O 2 R. 2 will not apply. (14 C. P. L. R 104). But where a portion of the claim was ommitted in the previous suit which was dismissed on a technical ground, the inclusion of such portion in the fresh suit will not be allowed. (1948 Cal. 366) The rule does not require the plaintiff to join all the causes of action which he may have against the defendant: But it merely provides that the grounds arising out of the same transactions be made the subject of attack in the suit between the parties.

O. 2 R. 3 provides "Save as otherwise provided, a plaintiff may unite in the same suit several causes of action, against the same defendant, or the same defendants jointly, and any plaintiffs having causes of action in which they are jointly interested against the same defendant, or the same defendants, jointly, may unite such causes of action in the same suit." This rule provides for the same thing as regards several causes of action as R. 2 provides for the several, matters in a single cause of action. The difference between the two is that where as under R. 2 the plaintiff has to include the whole of his claim in the suit, R. 3 is merely permissive and the plaintiff may or may not join all the causes of action against the defendant or defendants. He can sue seperately for seperate causes of action but this is an enabling provision by which he can save his time and energy by bringing only one suit in-

stead of many. Under this rule the plaintiff can ask for alternative reliefs, either on the same cause of action against different defendants or on the different causes of action against the same defendant. But the Court under this rule has to see that there is no inconvenience in the trial of the suit. If the Court sees that the suit brought on several causes of action cannot be tried conveniently, seperate trials will be ordered. Thus, where in one action the plaintiff joined claim for infringment of their 23 patents, it was held that it was not possible to try them in one suit [(1903) 1 Ch : 410.]

The rule also permits a party to bring one suit against several defendants if the causes of action against all the defendants are joint. It is not necessary that all the defendants are interested in all the reliefs claimed but it is sufficient that they are jointly interested in the main questions raised in the litigation. Thus, where two agents are jointly liable to render accounts though not each for the same period of time the plaintiff can sue them jointly. (7 *Cal.* 654) But if one plaintiff brings a suit against several defendants on seperate causes of action it is a case of misjoinder and the court can order for seperate trials because such a trial will complicate the matters. The joinder of causes of action is allowed for the convenience and not for complications Where there are two or more plaintiffs and they have a joint cause of action against one defendant, they can all join in one suit, but where, there are two or more plaintiffs and they have distinct causes of action against the same defendant it is a case of misjoinder. The same is the position where there are several plaintiffs and several defendants and the plaintiffs are severally interested against the defendants severally. In such a case, it is not only a case of misjoinder of causes of action but a case of misjoinder of parties also.

There are certain causes of action which the law prohibits to be joined together. Thus, in a suit for recovery of immovable property no party can join any other cause of action without the leave of the court except the following:

(*a*) Claim for mesne profits or arreas of rent in respect of the property claimed or any part thereof.

(*b*) Claim for damages for the breach of contract under which the property or any part thereof is held.

(*c*) Claim in which the relief sought is based on the same cause of action. (O. 2, R. 4)

Again no claim by or against an executor administrator or heir, as such, shall be joined with claims by or against him personally. unless the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or the defendant sues or is sued as an executor, administrator or heir, or as such he was entitled to, or liable for jointly with the deceased persons whom he represents. (O. 2. R 5).

The court can order seperate trials where it appears to it that any causes of action joined together in one suit cannot be conveniently tried or disposed off together (O 2. R. 6).

In the case of misjoinder also it is only an irregularity and no suit will be dismissed because of misjoinder. The objection about the misjoinder must be taken at the earliest opportunity and in any case before the settlement of issues, unless the ground of objection has subsequently arisen and if the objection is not so taken, it shall be deemed to have been waived (O. 2 R, 7.)

CHAPTER VII

PARTIES TO SUIT,

As to who can join as the plaintiff or who should be made a defendant in a case is one very important thing to be kept in view before drafting a plaint. There are though many remedies in the C. P. C. by which any defect in the parties can be cured but sometimes the difficulty arises in regard to limitation and the suit is dismissed merely because there is some mistake in impleading the parties and at the time one thinks of curing it, the suit is barred by time.

Who may be joined as plaintiffs in a suit? [B. U. 1941] [D. U. 1953]

Joinder of Plaintiffs : - O. 1 r, 1 C. P. C. Provides "that all the persons, may be joined in one suit as plaintiffs in whom any right to reliefs, in respect of or arising out of the same transaction ,or series of acts or transactions is alleged to exist, whether jointly, severally, or in the alternative, where if such persons brought separate suits, any common question of law of or fact would arise" The only conditions which have to be fulfilled before several persons can be joined as plaintiffs are that they should be interested in the subject matter either, jointly, severally or in the alternative and that if they bring seperate suits, any common questions of law or fact would arise. It is not necessary that every plaintiff should be interested in the entire subject-matter of the suit and even the plaintiffs having distinct causes of action can join in one suit provided their right to relief arises out of the same transaction and if the plaintiff brought seperate suits any common question of law or fact would arise. **Duke of Belford** vs. (**Ellis** 1901 App : Cases.) Even if two persons are entitled to different interests in a property they can sue a third person together for the recovery of the property from such third person. 19 **Mad** :.335 Another factor which is very necessary under this rule is that the right to relief must have arisen from the same act or

What is the rule about joinder of parties ? [D. U. 46]

transaction or series of transactions. Thus, where a publisher was using the words "Oxford and Cambridge" in the title of his publications it was held that the right to sue arose out of one transaction or transactions and the Universities of Oxford and Cambridge could join as plaintiffs in one suit. **Oxford and Cambridge Universities vs. Gill (1899) Ch : 55** Even if all the members joining as plaintiffs will be entitled to seperate reliefs, they can do so if the question to be decided is common for all.

The rule is merely enabling and not mandatory Thus, the persons who are entitled to sue together may not do so subject to ofcourse other provisions of law by which certain persons must be made parties to the suit.

State clearly who may be joined as defendants. [D. U. 48]

Joinder of Defendants :— O 1. r 3, provides that all persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where if seperate suits were brought against such persons, any common question of law or fact would arise As in O 1 r 1 several persons could be joined as plaintiffs in one suit, several persons can be impleaded as defendants in one suit provided the conditions laid down in O. 1 r. 3 are fulfilled. Under this rule also, it is not necessary that all the defendants should be interested in all the reliefs and the transactions comprised in the suit or that the liabilty of all defendants should be the same. It is also not necessary that the cause of action against each of the defendants should be the same or that the evidence against them should be the same. (1928 *Bom* : 91). All that is necessary is that there should be one question common to all the defendants. Another condition which has to be fulfilled is that all the persons sought to be joined as defendants in one suit should be within the jurisdiction of the court where the suit

is brought and if the court has no jurisdiction over some of the defendants O. 1.R. 3 will come into play. **B & N W Rly. Co Ltd. vs Sundram** 1922 Cal: 500. If the case against each of the defendants arises out of entirely different subject matters, they cannot be joined together and if one case is brought against hem, it is a case of misjoinder of defendants 6 All. 108 But it is not necessary that every defendant should be interested as to all the reliefs claimed by him in a suit (O. 1 R 5). It is sufficient, that there is some liability jointly or severally against all the defendants and that some common question of law and fact arises against them It is also not necessary that if a suit has been brought against some defendants, relief should be given against all of them, because under O 1 R 1 the court can given relief against any of the defendants Like O 1 R 1 the provisions of 0.1 .R 3 are enabling and not mandatary.

Parties to suits on contracts O. I. R. 6 provides that the plaintiff may, at his option, join as parties to the same suit all or any of the persons severally or jointly and severally liable on any one contract including the parties to the bill of exchange, hundies and promissory notes. A liability on a contract is either joint, joint and several or several A joint liability is also several but there are certain cases where it is not so Thus, where a person liable under a contract dies and the liability survives to his heirs, the liability of the heirs is joint and single one. 35 Mad. 26. If it is a case of otherwise joint liability then all the promissors are liable jointly and severally and the plaintiff can bring a suit either against all of them or against some of them.

But where the plaintiff has brought a suit against ne of the joint ... ecree has been atisfi ... against the ther ... a decree has

been partially satisfied, a suit against the other promissors can be brought for the balance of the amount The rule only applies where the defendants are liable under one contract and not to cases where they are liable under different contracts

Representative Suit. O I, r. 8 provides that where there are numerous persons having the same interest in one suit, one or more of such persons may with the permission of the Court sue or be sued, or may defend such suit on behalf of or for the benefit of all persons so interested. But the Court shall in such a case give at the expense of the plaintiff, notice of institution of the suit to all such persons either by personal service or wherefrom the number of the persons or any other cause such a service is not reasonably practicable by public advertisement or otherwise It further gives a right, to any person on whose behalf or for whose benefit, a suit has been instituted or defended, to apply to the Court to be made a party to the suit This rule has been enacted to save inconvinience which would be caused in making a large number of persons, who are similarly interested in one suit, as plaintiffs or defendants. It is a departure from the general rule that all the persons interested in a suit ought to be joined as parties to it. All that it requires is that the permission of the Court should be obtained for bringing such a suit and, that the parties should be numerous and should have same interest in the suit.

The rule also requires notice to be issued to all the persons interested in the suit and then it is for the individuals to apply to the Court to be made the parties. Any person who along with others has some interest in any matter can file a suit on behalf of all others and can apply to the Court to be made a plaintiff. Similarly, any person who has a right to defend the suit along with others can apply to the Court to be made a defendant and

can defend the suit. If a person is injured by some act along with other members of his community he can sue in his own right though a representative suit can also be brought The expression same interest is not confined to joint or concurrent interst but also applies to cases where the interest is similar though distinct (15 I C 399). The rule does not require that the whole body of persons on whose behalf the proceedings are taken should be of the same opinion and it is sufficient that a substantial majority supports such an action. (1949 *Mad.* 209.) A suit between two rival groups of the same caste or body is governed by this rule (1935 *Mad.* 542) There are certain suits to which the provisions of this rule do not apply e. g., a representative suit for damages is not maintainable because in such a suit cause of action seperately accures to several persons. **Jenkins Vs. John Bull Ltd.**

Parties in certain suits

(a) Suits by or against Firms :—

A partnership firm may sue or be sued in its own name (O. 30. R 1). But a joint Hindu family firm is not a partnership firm and as such the rule does not apply to it. The joint Hindu family should therefore sue and be sued in the name of all the persons constituting the joint Hindu family. In Punjab however, the rule has been made applicable to the joint Hindu family firm by the Lahore High Court by its notification of 12. 5. 1909 and it has consequently been held that in Punjab the joint Hindu firm can sue and be sued in its trading name. (1940. *Lah.* 425)

Again the rule applies only to the firms carrying on business in the Indian Union and does not apply to foreign firms who have to sue and be sued in the name of all its members. Though a suit can be brought against the firm in its name the plaintiff may implead the partners of the firm as

defendants A firm in dissolution can also sue in its own name if the transaction in suit was made before the dissolution. An individual working in the assumed name of a firm should sue in his own name and he cannot sue in the name of the firm But a suit can be brought against the firm in its name though owned by an individual.

(b) **Suits by or against corporations :—** Suits by or against the corporations must be brought in the name of the corporation and not against its officers. The pleadings in the suit by or against the corporation's should be signed and verified by its secretary or director or other principal officer who is able to depose to the facts of the case (O. 29 R 1) The suits by or against an unincorporated body, or unregistered society should be brought in the name of all its members. If the number of the members is large, a representative suit under O 1 R. 8 can be brought

(c) **Pre-emption Suits :—**

In a suits for pre-emption in respect of a joint purchase by several co-vendees all of them should be made parties to the suit. A second vendor is also a necessary party and so is a rival pre-empter.

(d) **Partition Suits :—** All the persons interested in the property are necessary parties to a suit for partition since the share to which each person is entitled has to be determined.

(e) **Suits by or against · Government :—** Under Article 300 of the Constitution of India the Government of India may sue or be sued in the name of the Union of India and the Government of a State may sue or be sued in the name of the State.

(f) **Suits for property dedicated to Idols :—** Suits relating to the property vested in an idol should be brought in the name of the idol because the idol is a juirstic person capable of holding pro-

perty. such suits should not be brought in the name of the manager or Shebiat.

How is the defendant to be described in the title of a plaint in a suit against: (i) an idol, (ii) a math, (iii) a firm, (iv) the Central Government, and (v) a State Government D U 1953.

(g) **Suits by or against a Math :**—The property of a math vests in its Mahant and as such all the suits by or against the *Math* be brought in the name of its Mahant.

(h) **Siuts by or against trustees :**—In all suits regarding the trust property where the dispute is between the beneficeries and the third persons, the trustee represents the beneficiary.

(i) **Suits by or against minors & lunatics** A minor or lunatic cannot sue himself but must sue or be sued through the guardian and the next friend In case a suit is instituted acainst a minor a guardian must be appointed by the Court to represent him. Such a guardian should not have any interest adverse to that of the minor or the lunatic.

(j) **Suits by or against the Insolvents :**—The suits by or against the insolvents must be brought in the name of the receiver because after a person has been adjudged as an insolvent, his property vests in the receiver.

(k) **Suits by or against Ambassadors and Envoys :-** An Ambassador or an envoy can sue and be sued in any competant Court in India with the prior consent of the Government of India under Sec. 86 C. P. C. Such consent must be specified by the signatures of a secretary to the Government of India.

Adding, Substituting and Striking out of the Parties :—O. r., 10 provides (1) where the suit has been instituted in the name of a wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bonafide mistake and that it is necessaay for the determination of the real matters in dispute so to do,

order any other person to be substituted or added as plaintiff upon such terms as the Court may think just. (2) The Court may at any stage of the proceedings either upon or without the application of either party and on such terms as may appear to the Court to be just, order that the name of any party improperly joined whether as plaintiff or defendant be struck out and that the name of any person who ought to have been joined, whether as plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit be added. (3) No person shall be added as a plaintiff suing without a next friend or as the next freind of a plaintiff under any disability without his consent. (4) Where a defendant is added the plaint shall unless the Court otherwise directs be amended in such a manner as may be necessary and amended copies of the summons and of the plaint shall be served on the new defendant and if the Court thinks fit on the original defendant also. (5) Subject to provisions of the Indian Limitation Act S. 22, the proceedings as against any person added as a defendant shall be deemed to have begun only on the service of the summons.

In order that the matters in dispute between the parties be properly adjudicated upon, it is necessary that all the necessary and proper parties should be before the Court. As to the question who is the proper party and the necessary party to a suit, one has to see to the frame of the suit and to the other provisions of C. P. C which lay down the principles as to who are the proper parties to the suit O. I, R. 9 provides that no suit shall be defeated by the reason of the misjoinder or non joinder of parties and the Court may in every suit deal with the matters in controversy so for as regards the rights and interests of the parties actually before

it. If there is a misjoinder or a non-joinder the defect can also be cured under O. I R 10 and no suit can be defeated merely because there is a misjoinder and non joinder of parties. All that the Court has to see is that in the case of the substitution of the plaintiff, the action was commenced in the mame of the original plaintiff by a bonafide mistake and that the substitution or the addition is necessary for the determination of the real matters in dispute. The right of the plaintiff, to be added must be the same as the right in the suit i. e, he can be substituted only to enforce the right which has already been pleaded in the case and a person who has a different cause of action inconsistent with that of the origional plaintiff, cannot be substituted as a plaintiff in the suit. (1915 L. Burma 45). The questions should only be one of "misdescription" of the plaintiff or the defendant. The other set of cases where the name of unnecessary parties can be struck out by the Court and the the name of the person whose presence is necessary before the Court for the proper adjudication of the matter can be added as parties to the suit.

There are two kinds of persons who can be joined as plaintiffs or defendants in a suit i. e. persons who ought to have been joined and the persons whose presence is necessary to enable the court to give a complete and effectual adjudication. The former is called the necessary party and the latter a 'proper party; The difference between the two is that whereas the necessary parties are the persons necessary to the constitution of the suit and in their absence no effective decree can at all be passed, the proper parties are the persons who may be interested in the result of the suit and who may have a right to seek the assistance of the Court in coming to a decision on the point in issue and the object of adding them to the suit is to avoid needless multiplicity of suits. It is not necessary that the

order any other person to be substituted or added as plaintiff upon such terms as the Court may think just. (2) The Court may at any stage of the proceedings either upon or without the application of either party and on such terms as may appear to the Court to be just, order that the name of any party improperly joined whether as plaintiff or defendant be struck out and that the name of any person who ought to have been joined, whether as plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit be added. (3) No person shall be added as a plaintiff suing without a next friend or as the next freind of a plaintiff under any disability without his consent. (4) Where a defendant is added the plaint shall unless the Court otherwise directs be amended in such a manner as may be necessary and amended copies of the summons and of the plaint shall be served on the new defendant and if the Court thinks fit on the original defendant also. (5) Subject to provisions of the Indian Limitation Act S. 22, the proceedings as against any person added as a defendant shall be deemed to have begun only on the service of the summons

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proper party should be interested in all the reliefs in the suit

An order under this rule for the substitution or addition of the parties can be made at any time but certain limitations have been prescribed by sub rule 5, to the rule by virtue of which the proceedings as against any person added as a defendant shall be deemed to have begun only on the service summons subject to the provisions of Sec. 22 of the Indian limitation Act of 1908 which provides that where a new plaintiff or defendant is added or substituted, the suit as regards him will be deemed to have been instituted when he was so made a party. This is a departure from the general rule that the amendment in the plaint relates back to the day of the filing of the suit Thus, when a new plaintiff is substituted for the original plaintiff and the suit is barred by time at the time of his addition, it must be dismissed In the case where there are certain plaintiffs, or defendants and, there is addition of a new plaintiff or defendant in the suit after the period of limitation, the suit will be barred as against him as also against the others if he is a necesssary party to the suit but if he is only a proper party to the suit, the suit against others will not get time barred (26 All. 528). But where the added party is already constructively a party to the suit, it is really not a question of adding or substituting new parties and Sec. 22 does not apply to such a case. Such cases, are covered by 'misdescription' and the 'misdescription' can be cured without going into the question of time

CHAPTER VIII



PLAINT

Every suit has to be instituted by the presentation of a plaint or in any such manner as may be prescribed (Sec. 26 C. P. C.) The only manner

prescribed for the Institution of the suit is by the presentation of a plaint to the Court or to any other officer, which is appointed in this behalf (O. 4 r 1). The plaint is a statement of plaintiff's claim and its object is simply to state, the grounds upon which the plaintiff seeks the assistance of the Court. It consists of three essential parts :—I. Heading and title II. Body of the plaint III. The Relief.

State the particulars to be contained in a plaint [Bom U 1950 Poona U. 1950 Guj. U. 1952].

Part I Heading and Title :—Every plaint should begin with the name of the court in which the suit is to the instituted O. 7. r 1 (a). The name of the Court should be written at the head of the plaint and is called its heading. It is not necessary to write the name of the judge who is presiding over the Court. Rather a practice has grown to write the name of the Court by its designation and not by the name. Thus, a suit brought in the High Court will be titled :

What are the other requirements of a valid plaint ? [B U. 1950]

In the Court of High Court of Judicature for the State of Punjab at Chandigarh.

Similarly, the suits brought in other Courts, will be titled by writing the designation of the Court. Where a court has various jurisdictions, the next thing which will follow is the jurisdiction in which a suit is brought. Thus, it will stand like this :

In the Court of District Judge at Delhi.
(Matrimonial Jurisdiction)
or
(Testamentary jurisdiction)

After this the number of the suit be given in the next line. The number has to be given by the Court official and a place should be left in the plaint like this :—

Suit No....................of 1957.

After the 'Heading' the next thing to be written is the title of the suit. It consists of (i) the name, description and the place of residence

of the plaintiff [(O. 7. r. 1 (b)] and where there are more than one plaintiffs the name, description, and place of residence of each plaintiff (ii) The name description and place of residence of the defendant or of each defendant if there are more than one defendant in so far as they can be ascertained [(O. 7 r. 1 (c)]. The object of giving the proper description of the party in the suit is to avoid any uncertainty with regard to the identity of the party. The word 'description' includes the age, the father's name and other particulars that may be necessary to identify the person. The place of residence of the plaintiff should be accurately given and that of defendant should be given as accurately as can be ascertained If the plaintiff after reasonable enquiry is not able to ascertain the particulars of the defendant he should include a para in the plaint to that effect.

A minor or a person of unsound mind cannot sue or be sued in his own name and should sue or be sued through the next friend and a statement must be made in the plaint to that effect [(O. 7 r. 1 (d)]. Thus a title of the plaint in a suit on behalf of a minor stands :

A B. s/o ... resident of ....a minor, through his next friend Shri...........
S/o..............resident of ....Plaintiff.

versus.

E. F. S/o... . ..., a minor through his guardian G. H. S/o...........resident of...........*Defendant*

PART II BODY OF THE PLAINT

The next portion of the plaint which consists of the statement of the plaintiff's claim and such

other matters which the plaintiff is legally required to state in his plaint. This portion consists of short paragraphs and generally each paragraph contains one fact. It is usually drawn up in the form of narrative in the third person and is usually prefaced by these words :

"The plaintiff, above named states as follows :"

This portion of the plaint is composed of two portions (i) *the formal portion and* (ii) *the substantial portion.*

(i) *Formal Portion* :—The formal portion consists of the following Particulars :—

(a) A statement as to when the cause of action arose. [O. 7 r. 1 (c)]

(b) Facts showing that the Court has jurisdiction. [O 7 r 1 (d)]

(c) A statement of the value of subject matter of the suit for the purposes of jurisdiction and court-fee, so far as the case admits [O. 7 r 1 (e)]

(d) Where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect. [O 7 r. 1 (d)]

(e) Where the plaintiff sues in a representative character, a statement to that effect as also the statements that the plaintiff has an existing interest in the subject matter and that he has taken the necessary steps to institute a suit.

(f) Where the suit is instituted on the expiration of the period of limitation prescribed by law, a statement showing the grounds upon which exemption from law of limitation is claimed.

O. 6. r 3 provides that the form given in Appendix A to C. P. C. will be used for all pleadings and where such forms are not applicable, forms of the like character, as nearly as possible should be used in the pleadings. It is however not of much

consequence if the paragraphs are not made according to the scheme given in the forms in Appendix A and it is sufficient that the particulars required are contained somewhere in the plaint

The date of the accrual of the cause of action should be correctly given and it is not sufficient to mention that the cause of action arose before a certain date The object of giving the date of the cause of action in the plaint is to see that the suit is within time. It is therefore right to mention the date which is the starting point of limitation As to what is the date of the cause of action one has to see to the nature of the case The date of cause of action in a case for damages on account of breach of contract would be the date of the breach of contract and not the date of contract The date of the cause of action in a suit for damage for a tort would be the date on which the tortious act was committed. Shortly, the date of accrual of cause of action to be mentioned in the plaint is the date of that event which makes the cause of action for the suit complete. The inaccuracy in the date is not fatal if the defendant is not prejudiced by it. Where the cause of action has accured on several dates all the dates should be given in the plaint.

Jurisdiction :—The next thing to be mentioned in the plaint about the cause of action is the place where it has arisen, because, in a plaint one has to mention the facts showing that the court has jurisdiction over the matter. Sections 15 to 20 of the Code of Civil Procedure lay down the rules about the place where the suit should be brought. Section 16 provides that all suits respecting the immovable and movable property shall be instituted in the court within the local limits of whose jurisdiction the property is situate. But a suit to obtain relief respecting, or compensation for wrong to immovable property held by or on behalf of the

defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted where the defendant resides, if the plaintiff so chooses. All other suits shall be brought at the place where the cause of action or any part of it has accrued or where the defendant at the commencement of the suit actually and voluntarily resides or carries on business or personally works for gain. In case where there are more than one defendants, the suit shall be instituted where any of the defendants resides or carries on business or personally works for gain provided either the permission of the Court has been obtained under Section 20 (b) of C. P. C. or the other defendants do not object to the territorial jurisdiction of the Court. In some contracts parties agree that any dispute arising between them out of the said contract shall be decided in the courts at a particular place. Such a contract about giving the jurisdiction only to a particular court is valid (*1946 Lah. 51*) and an averment should be made in plaint that the parties have agreed to the jurisdiction of a particular place.

Valuation :—The value of the suit for the purposes of court-fee and jurisdiction in most of the cases is the same but the two valuation are altogether different in character. There are however cases where the value of the suit for the purposes of jurisdiction is different from the value of suit for the purposes of court-fee. Such are the cases where a fixed court-fee has to be affixed though the value for the purposes of jurisdiction is much more i. e., the value of the subject matter of the suit. The value for the purposes of jurisdiction and court fee is the same in the cases in which *ad valorem* court-fee is charged under the Court-fees Act. The plaint should contain a para in which the valuation of the suit for the above two purposes be stated. The object of

this para is to enable the Court to see that the suit has been properly valued for both the purposes and that the proper court-fee has been paid. Under Section 17 of the Court-fees Act the court-fee is separately payable on each claim where a suit contains several causes of action and the relief is asked for all of them. But where several claims or reliefs arise out of the same cause of action the valuation of the suit is the aggregate of the valuation of all the claims. An instance of such cases is where the plaintiff sues the same defendant on two pronotes executed at different times In the cases where alternative reliefs are claimed the value for the purposes of court-fee is the value of the larger relief The statement about the value for the purposes of jurisdiction is required to determine whether the suit is within the pecuniary jurisdiction of a Court. As stated above in most of the cases the value for the purposes of court-fee and jurisdiction is the same but there are certain cases in which it is difficult to value the suit in terms of money. In such cases a fixed court fee is payable and under Section 9 of the Suits Valuation Act, various High Courts have fixed the value of such suits for the purposes of jurisdiction

Suits by minor : – In the suits brought about on behalf of a minor or an insane person, the cause title should contain the description that the plaintiff is a minor or an insane as the case may be and should also give the name of the guardian and the next friend. A statement to this effect should also be made in the body of the plaint

Representative suit :—In the representative suits, the fact, that the plaintiff is suing in a representative character, should be contained in the opening para of the plaint. Such a suit should also be accompained by an application under O. I r., 8 asking for the permission of the Court to sue in a representative capacity.

Limitation. If the claim is *prima facie* time-barred the plaintiff should make a statement about the grounds on which he wants the exemption from limitations prescribed by the law Such exemptions from limitation can be obtained under the exceptions given in Secs. 6 to 20 of the Indian Limitation Act If the ground of exemption is not alleged in the plaint, the suit is liable to be dismissed unless the plaint is amended and such allegation is made in the amended plaint. It is always better and more proper to make a specific allegation of the ground of exemption claimed by the plaintiff though it is sufficient to state that a particular act of the defendant brings the suit with in time The cases where the exemption from the limitation can be sought are where the part payment has been made during the period of limitation though the original claim is barred by time or where the defen-
[illegible] writing and
[illegible] ·om the date
[illegible] date of the
original claim There are certain cases in which the Court has to take judicial notice of the ground of exemption. Thus, where a suit is filed on the re-opening of the Court after vacations and its period of limitation expired during vacations, the suit should not be dismissed though this fact has not been stated in the plaint. Similarly, where the plaintiff has been in good faith prosecuting his claim in a Court which did not have the jurisdiction over the matter and he presents the plaint to an other Court on its return by the former Court for presentation to the proper Court, after the expiry of the limitation, the suit should not be dismissed only because the plaintiff has not stated these facts before the later Court. But in the cases where the plaintiff is required to make a specific allegation in the plaint, about the grounds on which he seeks the exemption and he does not do so, he cannot be allowed to raise it and nor can he put forth any documents, which saves

limitation, at the trial. The proper course for him then is to apply for amendment of his plaint.

(ii) The Substantial Portion.

[O 7 r. 1 (e) provides that the plaint shall contain a statement of the facts constituting the cause of action. It shall also contain the particulars of the facts mentioned above as are necessary. This portion of the plaint is called the substantial portion. Where a plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds they shall be stated as far as may be separately and distinctly (O 7r.8 Further, O7r. 5 provides that the plaint shall or that the defendant is or claims to be interested in the subject matter and that he is liable to be called upon to answer the plaintiffs demand. In the cases where there are more than one plaintiff's or where there are more defendants than one the plaint should show the right of each plaintiffs in the suit and the liability and its extent of each of the defendants and should also show as to why a particular person has been impleaded either as the plaintiff or defendant.

Cause of action. Cause of action is a bundle of the essential facts which it would be necessary for the plaintiff to prove in order to get the judgment in his favour. This statement of facts should be strictly in conformity with the general rules of the pleadings What the plaintiff is required to give is the statement of the facts with particulars from where the court may infer that he has a cause of action It is not at all sufficient to state alone that the plaintiff has a good cause of action If there is a doubt as to whether a particular fact is essential or not, it is always better to allege it rather than omit it because by omitting it there is always a risk of the suit being dismissed What facts are essential to constitute the cause of action for a particular case

depends upon the claim itself. Thus, in a suit on a contract the plaintiff must allege the contract first, and then its breach and then the damages In suits on torts the wrong alone need be alleged with the special damages which the plaintiff claims. But when the plaintiffs claims a special right, it must be alleged.

The plaint should contain only the facts and should not contain inferences of law and the evidence. Again it should contain only the relevant facts and not the facts which would prove an essential fact in the plaint.

There are some facts which have to be mentioned before the facts constituting the cause of action to make the later more understandable These are known as "matters of inducement". Such facts are strictly speaking not material facts and should be reduced to minimum.

PART III RELIEF

In a civil suit different kinds of reliefs can be claimed e g., recovery of debt, possession of immovable property, declaration of title to immovable property, declaration of any right, rendition of accounts, recovery of movable property, damages, injunctions, specific performance, appointment of a receiver [illegible]
more o[illegible]
native l[illegible]
specifically and should be accurately worded, as the court can in no case allow a man more than he himself claims and no relief can be granted upon facts and documents neither disclosed in the plaint nor dealt with by the issues or evidence in the case (1938 Lah. 296). It is however the substance and not the form which is material in deciding as to whether a particular relief has been claimed or not and the court in considering this question should look to the plaint as a whole.

According to the provisions of O.2, r 2 C P. C. a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs but if he omits except with leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted. Thus, if a plaintiff can ask for more than one relief on the same cause action he should do so otherwise he will be estopped from bringing a fresh suit for the omitted relief.

Where a person claims a larger relief he may be granted a lesser relief if he is found to be entitled to it unless the ground on which the lesser relief can be granted is inconsistent with his claim or is embarrassing to the defendant (1918 Madras 300). But a court cannot allow a larger relief than that claimed.

Damages :—Damages are of two kinds, general damages and special damages The plaintiff must claim a definite amount as damages in both the cases but in the case of special damages he should not claim more than the actual amount of such damages as he has to give full particulars of the amount he claims. Future damages anticipated on the date of the suit must also be claimed and a subsequent suit for them will be barred under O.2, r. 2 C. P. C. But if the tort is a continuing wrong *e. g.*, nuisance and the damages continue to arise, the plaintiff will not be estopped from bringing a fresh suit for damages accrring after the date of the institution of the suit [**Darley v. Mitchal (1886)** 18 A. C 127] The damages claimed must be such as have resulted from the direct and immediate act of the defendant.

Redundant Reliefs :—The reliefs claimed should be necessary and effectual, and a prayer about a relief which is not necessary and the grant of which will be implied in the grant of the other

and main relief, should not be made in the plaint Thus, where it is alleged that a father has transferred a certain property without a legal necessity, the sons can make a prayer only for the grant of a decree of possession of the property without asking for a declaration that the transfer was null and void, because the later relief they will get if they get a decree for the possession of the property Similarly, in a suit to recover possession of a property by the reversioner from the hands of a transferee of the life estate owner, all that is necessary is to state the grounds of claim and pray for a simple decree of possession It is only in cases where the document has been executed by the plaintiff himself that he should pay for cancellation of it before he can be allowed to recover the property. A minor can however claim the possession of the property alienated by his [illegible] asking for

an aliena-

The addition of the redundant reliefs involves the litigant in needless expense and trouble as he has to pay more court-fee and serious questions of limitation arise Sometimes lawyers try to anticipate the defence of the defendant and try to give reply to it in the plaint. This should be avoided. Another example of the redundant reliefs is the claim for several declarations where only one is necessary and all the rest simply follow from it.

General Relief :—O. 7. r. 7, C. P. C. provides that it is not necessary to ask for general and other relief wh[illegible] t may think ju[illegible] asked for. Th[illegible] in get in addition to the main relief which he has prayed for [illegible] add in his relief [illegible] reliefs which this [illegible] to be entitled to"

But the court cannot give any relief which is not

evidence was laid on right issues and no party was prejudiced by it. (*Fazal Elahi V Guddar Shah A. I. R.* 1937 *Lahore* 1). Thus, a plaintiff suing for a larger relief can be granted a smaller relief if he is found entitled to it and his suit cannot be dismissed. Similarly, a plaintiff suing for the possession can be granted a decree for joint possession and a wife who asked for dissolution of marriage but failed to prove adultary and proved cruelty on the part of her husband was granted a decree for judicial separation on the ground of cruelty (*Browne V. Browne* 1936 *Oudh Weekly Noting* 918).

Costs : It is unnecessary to claim costs as a definite relief because under sec. 35 (2) a Court is bound to pass an order about the costs of the suit and it cannot deprive the successful plaintiff of his costs except for special reasons to be recorded.

Future Interest : In all money suits the plaintiff should claim the future interest from the date of the institution of the suit till the realization of the amount in the suit, though under sec., 34 C. P. C the court has a discretion to allow it at such rate as it considers proper even if interest is not claimed. No court-fee is to be paid on the future interest No separate suit shall lie for the future interest if it has not been claimed or allowed.

Future Mesne Profits : In a suit for possession and past mesne profits a claim for future mesne profits may also be added. There is a difference of opinions as to whether a subsequent suit for future mesne profits is maintainable if the same is not claimed in a suit for possession. The Madras High Court has held that even if the plaintiff has not claimed future mesne profits the court can award them (1930 *Mad.* 160).

founded on the allegations in the plaint nor can a court grant any relief by way of general relief which would be inconsistent with the allegations made by the plaintiff in his plaint or the relief claimed by him Thus, if a suit is based on a right of easement, the relief cannot be that of a suit based on ownership Similarly, in a suit for injunction by a reversioner against the Hindu widow to restrain her from committing the waste, and for appointment of a receiver, the plaintiff cannot be granted a declaration of his reversionary rights, if he has failed to establish right to the reliefs claimed (**Janki V. Narayan swamy** (A. I. R 1916 Privy Council 117) But the Court has a power to grant certain reliefs by way of general relief if the relief to be granted is based on the same cause of action as the relief claimed Thus, in a suit on a pronote, the court can pass a decree on original consideration where all the facts showing the original consideration are stated in the plaint though the relief is claimed only on the basis of the pronote. Similarly, in a suit for rent, a decree for damages for use and occupation can be passed

A court has always the power to grant a different relief from the one claimed by the plaintiff when the necessary facts are stated in the plaint and if such facts are established they entitle the plaintiff for the grant of such a different relief because the court should always be ready to do all it can, to do justice and should give the right relief to which a plaintiff is entitled, as for as possible. The test in the cases in which the court is called upon to grant a different relief from the one claimed by the plainfiff is to see that the defendant is not taken by surprise and is not prejudiced if such a different relief is granted. Thus, in a case where the plaint was very badly drafted and the relief sought was not cleary set out, a proper relief was granted because the proper

evidence was laid on right issues and no party was prejudiced by it. (*Fazal Elahi V Guddar Shah A. I. R.* 1937 *Lahore* 1). Thus, a plaintiff suing for a larger relief can be granted a smaller relief if he is found entitled to it and his suit cannot be dismissed. Similarly, a plaintiff suing for the possession can be granted a decree for joint possession and a wife who asked for dissolution of marriage but failed to prove adultary and proved cruelty on the part of her husband was granted a decree for judicial separation on the ground of cruelty (*Browne V. Browne* 1936 *Oudh Weekly Noting* 918).

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CHAPTER IX

Written statement and set off

The written defence or the pleading of the defendant is called the written statement. O. 8, r. 1 C P.C. provides "that the defendant may, and if so required by the Court, shall at or before the first day of hearing or within such time as the Court may permit, present a written statement of his defence" The rule leaves it to the discretion of the defendant to file a written statement unless the court particularly requires him to do so. The written statement should be filed either on or before the first date of hearing or within such time as is granted by the court for doing so According to the provisions of O. 8, r 9 C P. C, no pleading subsequent to the written statement of a defendant other than by way of defence to a set off shall be presented except by the leave of the Court and upon such terms as the Court thinks fit but the Court may at any time require a written statement or additional written statement from any of the parties and fix a date and time of the presentation of the same. Such subsequent pleading of the plaintiff is called also the 'written statement' of the plaintiff. Where any party from whom a written statement is so required fails to present the same within the time fixed by the court, the court may pronounce the judgment against him or make such order in relation to the suit as it thinks fit (O 8, r 10) Some of the High

have held that this penalty can even be imposed for disobedience of orders made under O 8, r. I. **P. C. Mogha** in his celebrated work on Law of pleadings favours the later view.

The written statement to be filed by the defendant must confirm to all the general rules of pleadings and the rules which are applicable to a written

statement of the plaintiff which he is required to file under O. 8, r. 9 C. P. C.

The first thing which should be done before drafting a written statement of defence is that the plaint should be very carefully examined to see that it contains all the required particulars and that whole of the information required by the defendant for fully understanding the claim against him is contained in the plaint. If the plaint does not contain the required particulars the defendant should apply to the court for asking the plaintiff to give such particulars. If the plaintiff has referred to certain documents in the plaint, the defendant has a right to inspect those and where the copies of the documents have been filed the defendant can ask the plaintiff to produce the original documents before filing the written statement. If the defendant finds that certain allegations in the plaint are scandolous or embarrassing, he can apply to the court under O. 6, r. 16 to call upon the plaintiff to strike out such scandolous and embarrassing matter After this the defendant should make up his mind as to the line of defence he wants to take. If there are several defendants, they may file a joint written statement if the defence to the claim is the same but if their defences are different, they should file separate written statements.

The written statement should have the same heading and title which the plaint has, but where there are several plaintiffs or defendants the name of the plaintiff no ; 1 or the defendant no , 1 need only be mentioned and after him the words "and others" should be written. The number of the suit should also be mentioned after the name of court Before starting the actual written statement it should be mentioned as to on whose behalf the written statement is being filed. Thus, if there are several defendants, the written statement of defendant no : 1 shall contain these words " Written

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statement on behalf of defendant no : 1 ". After this the words The defendant no: 1 above named states as of follows "should be added The written statement should be signed and verified but no relief should be prayed in it except by way of set off in which case the prayer for the judgment of the amount claimed by the defendant should be made.

Forms of Defence

A defendant can in his written statement either traverse the allegations in the plaint or he can confess and avoid

By traversing the allegations in the plaint it means the total and categorical denial of the fact stated in the plaint The "confession" and avoidance" is called a 'special defence' also It is the form of defence where the defendant admits [illegible] ks to des- [illegible] own in the [illegible] defendant is entitled to take is called the 'dialatory pleas' which merely delays the trial of the suit on merits e. g., the defendant can pray that the suit be stayed under sec. 10 C. P. C. or that the suit has not been properly framed because there is a misjoinder of parties and causes of action and that the case cannot be decided untill these defects are removed. On the other hand the pleas which go to the very root of the case are called 'pre-emptory pleas' or 'pleas in bar '. These shoutd be taken at the earliest opportunity either in the written statement or by a seperate application.

The defendant must take all the possible defences in his written statement and he can even give a ground of defence which has arisen to him after the instutition of the the suit.

He is entitled to take any or more of the forms of defences given above either together or in the alternative. He can in certain cases even plead

inconsistant defences where they are not based on facts contradicting each other. Where the defendant intends, to take several pleas of defence in his written statment they should be separately stated like :-

(1) Denials and admission;

(2) Dilatory pleas;

(3) Objections in point of law;

(4) Confession and avoidance or special defences;

(5) Set off.

☞ 1. **Denials and Admissions :—**

The defendant in his written statament should either admit or deny the facts alleged in the plaint or where he has knowledge he may refuse to admit them. According to the provisions of O. 8 r, 5 the defendant must specifically deal with each allegation of the fact which he does not admit and it is not sufficient to plead a general denial of the grounds alleged by the plaintiff. The defendant should only deny the facts stated in the plaint and nothing should be denied which is not expressly alleged in the plaint even if the defendant thinks it might be in plaintiff's mind or that the plaintiff really meant to allege it.

The following rules must be remembered when traversing the opponent's pleadings :—

(a) Denials must be specific :-

The defendant should take up every allegation, he wants to deny separately and should catagorically deny those in his written statement. The denial should be bold and clear and not half hearted. It is also not proper to say that the defendant does not admit a particular para or a particular allegation in a certain para as alleged. It is also not correct to state that a certain portion of a para is admitted and the rest is denied. The proper thing is that the

allegations which are denied should be specified The facts which are not essential to the cause of action but are alleged only as a matters of inducement, or introductions or as explanations of essential fcts, should be denied with reference to the paragraphs. But this form of denial should be avoided in the case of essential facts except when they are very engthy. When a joint written statement is filed on behalf of several defendants it should state that each defendant denies the allegations. The plea that the defendants did not execute the pronote is not specific.

Denial of a compound allegation : – In certain cases the plaint contains compound allegation consisting of several and distinct facts. If it is intended to deny each of such facts the defendant should break up the allegations into separate parts and should deny each of them separately. A single denial of the whole of allegation will not be specific.

Thus, where it is alleged by the plaintiff that the defendant enticed away the plaintiffs wife and the defendants want to deny it, it is not sufficient to say that he never entiled away the plaintiffs wife because it will only mean a denial of enticing away and not the facts that the woman was plaintiffs wife In such a case the defendant should separately state that : – (i) the defendant never enticed away the said woman and (ii) the said woman is not plaintiffs wife. Similarly, where the plaintiff alleges that the defendant took possession of the plaintiffs house and the defendant wants to deny both the allegations, he should do so by stating that (i) the defendant never took possession of the house and (ii) the house does not belong to the plaintiff.

Consequences of a denial not specific: O. 8 r. 5 C.P.C provides that "every allegation of fact in the plaint, if not denied specifically or by implication, or stated

to be not admitted in the pleading of the defendant, shall be taken to be admitted." The defendant must specifically deny the facts he does not want to admit because if he does not do so he runs the risk of being taken to have admitted it. As the plaintiff does not have to prove the facts which the defendant has admitted, it is also sometimes not necessary for the plaintiff to prove certain facts for which there is no specific denial or denial by implication by the defendant. A general denial cannot mean a denial by implication but the rule allows the traversal of an allegation in the plaint by saying "not admitted". By necessary implication it is meant that the denial of one fact necessarily follows from the denail of the other fact and there is no denial by necessary implication of a fact that the allegation needs no reply (1923 Lahore 409). The pleas that "the defendant puts the plaintiff to the strict proof of a certain allegation" or "he has no knowledge" or "not known" or "the allegations needs no reply" are not sufficient denials and allegations so denied shall be deemed to have been admitted (1925 Mad. 950, 1934, Rang. 278).

The rule of constructive admissions does not apply to a person under any disability such as minors or a person of unsound mind. The constructive admission cannot be used against a defendant in any subsequent litigation and it is only for the purpose of a particular case. Whether it applies to the cases where the defendant does not appear or files a written statement is a very controversal point. Some High Courts have held that it has no application to the *exparte* cases while the others have held otherwise.

The court has a discretion to require the plaintiff to prove the facts which will be deemed to have been admitted under O. 8, r. 5, C.P.C otherwise than by such admissions.

☞(*b*) **Denials must not be evasive** : O. 8 r. 4 C.P.C

provides that "where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance." Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that sum or any part thereof, or else, set out how much he received And if an allegation is made which divers—circumstances, it shall not be sufficient to deny it along with those circumstances Thus, where several circumstances are set out in the plaint as constituting the details of certain transactions, the defendant, instead of denying the several circumstances specifically, denies them as a whole using almost the language of the allegations, the denial is evasive within the meaning of the rule Where the plaintiff alleges that the defendant borrowed a sum of Rs. 500/- from the plaintiff, it is not sufficient to say that the defendant did not borrow Rs. 500/- from the plaintiff but it should be stated that the defendant never borrowed Rs. 500/- or any part thereof from the plaintiff. Similarly, where the plaintiff sues for dissolution of partnership on the allegation that the defendant agreed to enter ... certain business ... the entering ... terms were not definitely agreed upon as alleged, the denial is evasive (1929 Sindh 7) because the plea that states "As alleged" is evasive The proper course in such a case would be to add the words 'like' or 'all' etc., In England the defective and ambigious denial is called the "Negative Pregnant".

What is meant by 'evasive denial' in defence? Please give two illustrations. [D. U, 53,55]

There is some difference in the meaning of the words 'Denied' and 'Not admitted'. Where a fact is within the defendant's knowledge it should be clearly admitted or denied, but where it is not within his personal knowledge he should state 'not admitted'. There are certain exceptions to the general rule that a fact must either be admitted or denied. Thus, if

the plaintiff raises in his plaint certain matters of law or inferences from law, the defendant need not deny them, because O. 8, r. 3 applies only to facts. The defendant may however take an objection in point of law if he does not admit such an allegation. The defendant may also not plead to claim or amount of damages. It is not necessary to deny the relief claimed.

2. **Dilatory pleas :**

The dilatory pleas in a suit can either be taken in the written statement or by a seperate application. They should be taken at the earliest opportunity and should be decided by the court before proceeding in the case on merits. Such pleas should be definite and should not be vague and should be supported by the facts where-ever necessary. Thus, if an objection is taken that the suit is bad for non-joinder of parties, the defendant should state as to who is the person who should have been a plaintiff in the suit. Similarly, where the defendant pleads that the suit [illegible]
C. he must [illegible]
suit whic[illegible]
of dilatroy pleas are :—

(i) that the suit is bad for mis-joinder of parties,

(ii) that the proper court-fee has not been paid,

(iii) that the defendant is a minor and has been sued without a guardian,

(iv) that a certain person who is a necessary party to the suit has not been impleaded.

3. **Objections in point of law.**

These are objections which should raise a point of substance and they are taken to a legal inference drawn by the plaintiff in his own favour, while admitting and accepting as proved for the sake of

arguments the facts from which the plaintiff draws such an inference. The plea of objections in point of law is quite a different thing from the denial because in the later case the defendant denies the correctness of the facts. It is also a different thing from the special defence where the defendant while admitting the correctness of the facts alleged by the plaintiff seeks to destroy the same by alleging some facts of his own in the affirmative. It is a case where the defendant admits, for the sake of arguments, as proved the facts alleged in the plaint and bases his objections on these suppositions Thus, where a suit is brought by a lady claiming the property as the sister of the deceased the defendant may deny the *factum* of the plaintiff being the sister of the deceased and may also contend that under the personal law, applicable to the parties the sister does not succeed to her brother. Similarly, the defendant can allege that the plaint does not disclose any cause of action or that the damages are too *remote*.

The objections in point of law should be framed in a definite language. They are usually decided at the time of the trial but under the provisions of O 14, r. 2. the court may decide such legal issues as preliminary issues if the case or any part of it can be disposed off on the decision of such issue or issues

4. **Special Defence** ·

A plea of special defence which is also called a plea of "confession and avoidence" has altogether a different meaning from 'traversing'. In the later case the defendant merely denies the allegations made in the plaint and the plaintiff has to [illegible] suc- [illegible] lant [illegible] the plaint but seeks to destroy their effect by pleading something in the affirmative. In this case the burden of proof lies on the defendant whereas in the

case of mere traverse the burden of proof lies on the plaintiff. The plea of special defence must be specifically pleaded in the written statement according to the provisions of O. 8, r. 2 which provides "the defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality". Thus, if the plea of a special defence is not taken up in the written statement, the defendant will not be allowed to take it up at the trial of the suit. There are however certain pleas which though not taken in the written statement can be raised at the time of the trial. Such are the cases where the suit according to the plaintiffs own showing is barred by time or where the plaintiff is not taken by surprise.

It is not necessary for the defendant to first admit the facts the effect of which he wants to destroy by alleging some affirmative plea and he can always raise both the pleas of traverse and confession and avoidence. Where he takes both the pleas he should not mix them and he should not merely traverse a plea where he should have taken a plea of special defence also, because O. 6, r 8 provides that where a contract is alleged in any pleading a bare denial of the same by the opposite party shall be const... fact of the ...ters of fact ... not as a ...w of such ...e case of a ...he defendant should not put up a plea of the 'special defence'.

The defendant should not set up a case in affirmitive when the case set up by the plaintiff is very difficult of proof and the chances are that the plaintiff will not be able to substantiate it. But where the defendant sees that by adding his own version he will be able to show clearly what the real point in dispute is, he should do so, but frivilous and untenable pleas should never be raised.

Different forms of special defences

(*i*) *Limitation :* The defendant should take up the plea of limitation in the written statement because this plea is complete defence to the claim. If the plea of limitation is not taken in the written statement it may not be allowed to be taken up at the time of the arguments unless the plea is such that it can be substantiated without any evidence and it is apparent on the face of the plaint itself. The plea of limitation is not allowed to be taken up for the first time in appeal. The defendant should state under which article of Limitation Act the whole suit or any part of it is barred by time.

(*ii*) *Jurisdiction* : Strictly speaking this plea is a dilatory plea because the plaint has to be returned for presentation to a proper court if the objection of of the defendant about the jurisdiction is accepted by the court. The defendant can take an objection to the jurisdiction of a court in respect of its territorial or pecuniary limits, or in respect of a subject matter of the suit No objection in respect of the pecuniary or territorial jurisdiction of a court can be entertained in the appeal if the same has not been taken up in the written statement. But if the objection is to the inherent jurisdiction of the court, it can be taken up at any time. The objection to the jurisdiction should be supported by the facts and a vague and general plea is not sufficient.

(iii) *Accord and Satisfaction :* If the defendant gives something, does something for plaintiff, which the later accepts under a mutual agreement as a discharge of the claim, the plea is called the plea of 'accord and satisfaction'. The agreement is the 'accord' and the thing given or the act done is the 'satisfaction'. Mere accord is no defence.

(iv) *Payment :* In pleading payment the mode and time of the payment should be specified in the written statement. There is no necessity of alleging the payment for which the plaintiff has himself given the credit.

(v) *Estoppel :* If the defendant wants to take a plea of estoppel, he must set up such plea specially by making necessary averments about the particular act, omission, conduct or deed which he alleges to constitute an estoppel.

(vi) *Res-judicata :* The plea of *res judicata* should be specifically pleaded. If it is not raised in the written statement it will be deemed to have been waived. The particulars of a previous judgment, the subject-matter and parties to the previous suit should be clearely given.

(vii) *Acquiescence :* Acquiescence which will deprive a party of his legal righ must amount to a fraud.

(viii) *Illegality :* It is not enough to plead that a particular contract is void but the facts rendering it void must be pleaded. But if the illegality of a contract follows from the facts alleged in the plaint itself, they need not be repeated in the written statement.

(ix) *Justification* : The plea of justification is usually pleaded in the case of a libel or malicious prosecution This plea should be raised only where there is a strong hope of establishing it. The defendant should give full particulars of justification. The plea must be a justification of the exact charge

(x) *Latches* : The delay or latches in filling a suit is no defence, however long it may be, unless it amounts to waiver, abandonment or acquiescence.

5 SET OFF :

Set off means the reciprocal acquittal of debts between two persons It is a plea in defence pure and simple and means a claim which by adjustment would either wipe off or reduce the plaintiff's claim for money as made in the suit.

Where in *a suit for the recovery of money* the defendant claims to set-off, as against the plaintiff's demand, any *ascertained* sum of money *legally* recoverable by the *defendant* from the *plaintiff, not exceeding the pecuniary jurisdiction of the Court,* and *both the parties fill the same character as* they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set off. (O. 8, r. 6).

The essentials of a legal set-off may be analysed as under :

(1) The suit must be one for the recovery of money.

(2) The defendant must claim to set off against the plaintiff's claim—

(i) an ascertained sum of money,

(*ii*) the sum must be legally recoverable from the plaintiff i. e., it must not be barred by the law of limitation. It must be recoverable by the defendant or by all the defendants if there are more than one from the plaintiff or all the plaintiffs if there are more than one'.

(*iii*) the sum must not exceed the pecuniary limits of the jurisdiction of the Court in which the suit is brought;

(*iv*) both the parties must fill the same character in the suit and in the set-off.

Effect of set-off. The claim by way of set-off in the written statement shall have the effect same as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off. It is chargeable with court-fees and the plaintiff may give his written statement by way of defence to the defendant's claim The defendant will get a decrée for his sum though the plaintiff's original claim is withdrawn or held not proved. Where both cross claims are proved a decree is made for the balance in favour of the plaintiff or the defendant as the case may be.

☞ **Equitable Set-off.** The right to set-off dealt with by this rule (O. 8, r. 6) is known as legal set-off. In certain cases, however, the defendant may be allowed a set-off even in respect of an unascertained sum which sounds in damages. There are cases where the cross demands arise out of the same transaction, or *some relation or are so connected in their nature and* circumstances that they can be looked upon as part of one transaction. In such cases the Courts of Equity in England have allowed a plea of set-off *even though the amount may be unascertained,* on the ground that it would be inequitable that the plaintiff should recover and the defendant driven to

a cross-suit This set-off is known as equitable set-off and such a right is recognised in Indian Courts as well, not under the provisions of the present rule which is limited to a legal set-off, but in exercise of the general right of defendant to plead a set-off whether it is legal or equitable. The provisions of the Code regulate procedure only and do not take away from the parties any right to set-off which they would have had independently of its provisions. O. 20, r 19 (3) does recognise such a right.

It is essential for a valid claim to an equitable set-off that the cross-demands should have arisen out of the same transaction. A plea of equitable set-off will not be available where it relates to a different transaction.

Illus. Where a washerman who lost some articles given to him for washing, sued his employer for wages, it was held that the latter could equitably set-off the price of the articles so lost.

☞ **Legal set-off and equitable set-off distinguished.** (1) In a legal set-off, the amount claimed must be an ascertained sum of money ; in an equitable set-off even an unascertained sum of money can be claimed.

(2) Legal set-off can be claimed as of right if the conditions laid down in O 8, r. 6 are fulfilled Equitable set-off cannot be claimed as *of right*. Whether to allow it or not depends upon the discretion of the Court.

Write detailed note on--Difference between a legal set off and an equitable set off and how they are to be pleaded. [O. U. 1950]

(3) The sum which can be claimed by legal set-off need not be due from the same transaction to which the plaintiff's claim relates. Equitable set-off cannot claim such a wide field.

(3) An equitable set-off may be claimed and allowed in respect of a barred debt when there is fiduciary relationship and mutual accountability between the parties but a legal set-off cannot be allowed unless the amount claimed is legally recover-

able (i. e., not barred) at the institution of suit.

(5) A party is not bound to claim a legal set-off, but may bring a separate suit for the recovery of money claimed by him. Equitable set-off should always be pleaded in the first suit.

☞ **Set off and Counter-claim distinguished.** (1) Set-off must be for an ascertained sum or it must arise out of the same transaction as the plaintiff's claim; a aounter claim, however, need not arise out of the same transaction.

Write a short note on counter-claim [Poona, U. 1951].

(2) Set-off is a ground of defence and it should be pleaded in the written statement ; counter claim does not afford any defence; it is a weapon of offence which enables a defendant to enforce his claim against the plaintiff as effectively as in an independent action Set-off can be used as a shield and not as a sword.

(3) To defeat the claim of set-off on the ground of limitation the plaintiff must show that it was time barred at the time when the plaintiff commenced his action. In the case of counter-claim he must show that it was time-barred when it was pleaded.

CHAPTER X

APPEALS AND CROSS OBJECTIONS

Memorandum of Appeal :– Eevery appeal has to be filed by a memorandum of appeal. A memorandum of appeal consists of the (i) formal part and (ii) the material part

Formal Part : The formal part of the memorandum of appeal consists of (a) Heading and title. (b) An introductory statement of the appellant, giving particulars of the decree and order against which the appeal is directed. (c) Valuation of the appeal.

Heading and Title : –The heading and title of the memorandum of appeal contains the name of the court in which the appeal is filed. The next thing to follow is the parties to the appeal It is always better to write as to what character did a particular party fill in the lower court, after the name of the party.

Introductory statement :— The introductory statment which follows the names ot the parties should be as follows :—

Appeal against the order dated.......... of Shri ....Sub Judge, 1st Class, Delhi, in suit No ....of 1957 dismissing the suit of the plaintiff-appellant

Value :— The memorandum of appeal should contain a statement of the value of the appeal for the purposes of court-fees and jurisdiction and the amount of court fee paid on it.

Material Part : Th[illegible] of appeal consists of [illegible] are the grounds on [illegible] is attacked. The appellant cannot be heard on a point not included in the grounds of appeal but it is the discretion of the court to allow him to urge such a point which he has failed to take (**Hazura Sing . Vs. Kishan Singh 1933 Lahore 447**) The appellant is entitled to make a ground of attack in the mistakes committed by the lower court in weighing the evidence or any mistaken view about the law or misapplication of law to the facts of the case or any material irregularity committed in the trial of the case (S. 100 C P. C.).

The mistake committed by the court should be material and the finding of the lower court on the question of a fact or law which is very material to the decision arrived at by the court, should not be made a ground of appeal. The objections taken must be such as arising from the pleading

and evidence in the lower court as a general rule. The appellant is not entitled to set up a new case in the appeal nor is he entitled to put up a case inconsistant with that set up by him in the lower court. There are however certain exceptions to this general rule and it has been held that an objection based upon a point of law can be raised for the first time in appeal provided it can be decided on facts before the court. Similarly an objection on the score of a defect fatal to the suit may be taken up for the first time in the appeal. An objection to the maintainablity of the suit can also be urged in the appeal though not taken in the lower court. In short the objections which go to the very root of the case may be entertained at any stage.

An appellant is not entitled to raise a new point in the second appeal because a party is not allowed to raise a new issue in the second appeal. There are however certain questions of law which the appellant is entitled to raise for the first time in the second appeal but such questions of law which require investigation into facts can not be raised in second appeal. An objection to the inherent jurisdiction of the court and a plea of limitation which can be determined on the pleadings only, can be raised for the first time in the second appeal.

Rules for drafting grounds of appeal :— (i) They should be stated distinctly and specifically.

(ii) They should be written concisely.

(iii) They should be written under distinct heads.

(iv) They should be without any arguments and narrative.

(v) They should be numbered consecutively.

Relief : The appellant should mention in his memorandum of appeal the relief sought by him in the appeal though strictly speaking it is not very necessary and its asbence is not very fatal to the appeal. The relief claimed should be for the reversal of the order and decree passed by the lower court against him or for any other relief which he seeks from the appellate court.

According to the provisions of O. 41 r. 1 (1) the memo of appeal may be signed either by the appellant himself or by his pleader. The verification of the memo is not necessary.

Who may appeal : A party who is adversely affected by the decree can only appeal and no person other than a party to the suit has a right to appeal. Where there are more plaintiffs or more defendants than one in a suit and the decree appealed from proceeds on any ground common to all the plaintiffs or the defendants, any one of the plaintiffs or the defendants may appeal from the whole decree. (O. 41. r. 4.)

Who may be made respondents : The appellant must make respondents to the appeal all those persons who would be' effected by the success of his appeal. Where a decree has been passed jointly in favour of several plaintiffs the defendant must add all the plaintiffs in his appeal (1928 Lahore 947).

Write a short note on cross objections [O. U. 1949 Pat. U. 1950 Raj. U. 1950]

☞ **Cross Objections :** O. 41, r. 22 provides that any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the court below, but take any cross objection to the decree which he could have taken by way of appeal provided he has filed such objections in the appellate court within one month from the date of service of notice upon him. Such cross objections shall be in the memorandum of appeal. The heading and title of the cross objections must be the same as that of the appeal. The cross objections should be prefaced

with the following words "whereas shree...... has filed an appeal from the decree of Shri...Sub-Judge First Class, Delhi. The respondant hereby files cross objections to the appeal and sets forth the following grounds." After this the grounds of the cross objections should be given keeping in view the rules which apply to the memorandum of appeal.

A cross objection should be valued as an appeal and the court fee should be paid accordingly.

CHAPTER XI

APPLICATIONS AND AFFIDAVITS

Applications.

In drafting the applications one should take the same care as in draft[illegible]

[illegible] provisions of law under which the application has to be filed : If the rule prescribes the mentioning of the particulars to be mentioned in the application, all the particulars should be given.

The grounds on which the application is based should be started in the words of the rule and law under which the application is made. The application should also contain a prayer clause and the prayer should as far as practicable be in the words of the statute or rule The application consists of these parts. (1) *Heading and title* (2) *Body of the application* and (3) *Prayer.*

(1) *Heading and Title:* The heading and title of the application should be the same as that of the plaint. It should have the name of the court at the top and then the name of the applicant and the opposite party.

affidavit should be correctly and fully described.

(5) Where the declarant speaks on personal knowledge he must state that he is swearing to this thing.

(6) Affidavits should be confined to the facts within the personal knowledge of the declarant.

The affidavit should end with the verification and person giving the affidavit should state on oath that the facts alleged in the affidavit are within his personal knowledge and that he has concealed nothing.

APPENDIX

FORMS OF PLEADINGS

The [illegible]
to offord [illegible]
pleading ought to be drafted. Before drafting a plaint or a written statement it is necessary that all the rules discussed in the preceding chapters should be kept in view. One very important factor in filing a suit is the court in which the suit lies. The value of the suit for the purposes of jurisdiction has to be determined according to the provisions of the Suits Valuation Act. The suit should be instituted in the court of the lowest jurisdiction but certain limitations have been placed over the jurisdiction of various courts by virtue of which certain courts cannot take cognizance over certain matters. In Punjab the division of the Courts has been made in such a way that particular court can try the suits having a particular value for the purposes of jurisdiction. Thus a sub-judge IVth Class can try suits involving an amount upto Rs. 1000/-only and the Sub Judges of the III and II class can try suits involving a sum upto Rs. 2000/- only and Rs. 5000/- only respectively. A Sub-Judge of 1st class how-

ever can try any suit subject to the limitations placed on his powers by certain enactments which provide that the suits arising under that Act will be triable by some higher courts such as the District Judge or the High Court Thus the matrimonial suits are triable only by the District Judge and the suits arising out of the Indian Companies Act are to be tried either by the High Court or the District Judge though according to their value for the purposes of jurisdiction a Sub-Judge has the power to take the cognizence of the Suit. According to the Provincial Small Causes Courts Act. 'simple' money suits involving an amount upto Rs. 500/- can only be tried by a Court of Small Causes (in Delhi however the simple money suits involving a sum upto Rs. 1000/- are triable only by a Court of Small Causes) and no other court can try such suits But it should be kept in mind very clearly that only simple money suits are triable by the Court of Small Causes and the Small Causes Courts Act has placed restrictions on the jurisdiction of such Court about the other suits. A Court of Small Causes has therefore no jurisdiction over the suits for injunction, damages, accounts, specific performance *etc.*, *etc.*, though according to their value they fall under its jurisdiction. The examples of simple money suits are suits on pronotes, bonds, hundies etc , etc.,

There are certain technicalities of law which one must observe in drafting plaint or written statement. There are certain paras which must be introduced in the plaint according to law such as the facts showing the cause of action and the facts that the court has pecuniary and territorial jurisdiction over the matter. Similarly in the verification one must show as to which paras are based on *personal knowledge and* which paras on the information. A technical defect in the pleadings does not make much differnce to the rights of the parties but sometimes one has to incur an

expeninditure in the form of costs etc., in order to remove the technical defect.

No. 1. *Suit on a simple monoy bond.*

IN THE COURT OF THE SENIOR SUB JUDGE AT DELHI

A s/o B resident of 20/54 Shaktinagar Subzi Mandi, Delhi...... ......Plaintiff

Versus.

C s/o D resident of 2 Fiaz Bazar, Delhi. ......Defendant

Suit for the recovery of Rs. 1120/- being *the principal and interest due on a bond.*

The plaintiff above-named submits as under :—

1. That on April 4, 1955 the defendant borrowed from the plaintiff the sum of Rs. 1000/- and agreed to repay the same with interest at the rate of 12 per cent per annum with in six months and executed a bond for the same which is submitted herewith as Exhibit 'A'.

2. The defendant has not paid any portion of the amount lent to the plaintiff inspite of the expiry of the time for its repayment.

3. That now sum of Rs. 1120/- as detailed below is due from the defendant to the plaintiff which he has failed to pay inspite of many demands by the plaintiff in this behalf. The plaintiff has also served the defendant with a registered notice of demand, the copy of the notice and postal receipts are attached herewith.

Details of the amount due.

(i) Principal......... Rs. 1000/-
(ii) Interest from 4. 4. 1955 to 3. 4. 1956 at 12% P. A......Rs. 120
Total . . ..Rs. 1120/-

4. That the cause of action accrued in favour

of the plaintiff against the defendant at Delhi on 4-4-1955 the day on which the bond was executed.

5. That the bond was executed at Delhi, the defendant resides and personally works for gain at Delhi. This Hon'ble Court has therefore the jurisdiction to take cognizance of the suit.

6. That the value of the suit for purposes of jurisdiction and court-fee is Rs. 1120/- and a court-fee of Rs. 131. annes 4 is affixed on the plaint.

The plaintiff therefore prays :—

(i) That a decree for Rs. 1120- be granted to him against the defendant.

(ii) Costs of the suit be awarded against the defendant.

(iii) Future interest from the date of the institution of the suit till the realization of the decretal amount be allowed.

Sd/- A.... Plaintiff

Through Shri C. B. Lall
Advocate.

Verification.

I, the above named plaintiff do hereby solemnly affirm that the facts stated above in paras 1 to 3 are true to my knowledge and paras 4 to 6 are believed be true on information received

Verified on 5-4-1956 at Delhi.

Sd/-A... Plaintiff

No 2. *Suit on an instalment bond*

IN THE COURT OF SENIOR SUB JUDGE AMRITSAR

AB S/o CD, shoes merchant, Hall Bazar Amritsar ... ..Plaintiff

EF S/o GH, Accountant, Ganesh Flour Mills Amritsar ....Defendant

Suit for the recovery of Rs 800 due on an instalment bond.

The plaintiff submits as under:—

1. That on January 2, 1955, the defendant in consideration of a loan obtained by him from the plaintiff, executed an instalment bond for Rs 1200, agreeing to pay the said amount by instatments of Rs 200 each on the first day of every month, begining from February, 1955.

2. That the defendant further agreed by the said bond that in case default was made in the payment of any one instalment, The whole amount then remaining due shall at once become payable.

3. That the defendant paid the first instalment on the date but not the second instalment which he offered to pay after 10 days of its due date, i. e, on Fabruary 11, 1956. The plaintiff, however, accepted the payment and verbally agreed to waive the benefit of the acceleration clause in the bond.

4. That the defendant has not paid any of the remaining instalments and the plaintiff claims the whole amount remaining due under the default clause by reason of default in payment of the third instalment.

5. That the cause of action accrued to the plaintiff against the defendant at Amritsar within the jurisdiction of this Hon'ble Court on 2nd January 1955 the date on which the bond was executed and again on such dates on which the default in payment was committed.

6. That the residence of the defendant and the accrual of cause of action being at Amritsar thus Hon'ble Court has got jurisdiction to try the suit.

7. That the value of the subject matter of

the suit for the purposes of court-fees and iurisdic tion is Rs 800/- and the court-fees of Rs 91-4anna has been affixed on the plaint.

That the plaintiff claims a decree for Rs 80(with interest frcm the date of suit to that of payment at such rate as the court deems reasonable

Sd/B. R.........Plaintiff
thorugh Shree K. N. Kataria
Advocate

Verification:

I, the above named plaintiff do here by solemnly affirm that paras 1 to 4 are true and correct to my knowledge and the remaining paras are correct to my belief.

Verified at Amritsar; this 16th day of June 1956.
Sd/A B.........plaintiff

No 3. *Suit on the basis of a cheque.*

IN THE COURT OF JUDGE SMALL CAUSES DELHI

AB s/o C D resident of 110328 Jaipuria Buildings, Subzi Mandi, Delhi ......Plaintiff

Versus

E F s/o X Y resident of 55/550 Rehgarh Pura Karol Bagh New Delhi. ......Defendant

Suit for the recovery of Rs. 500/- on the basis of *Cheque No. 11215 dt, 1. 10. 1955.*

The above named plaintiff states as under : –

Draft a plaint in a suit on a cheque. [P. U. 1955]

1. That the plaintiff is the holder of a cheque No 11215 for Rs 500 dt. 1. 10. 1955 drawn by shree K. L. s/o T. R. of 11 Nai Sarak Delhi on the Central Bank Ltd., Connaught Place New Delhi payable to Shri J. D. of Bharat Fruit Co, Subzi Mandi Delhi or order and endorsed by the said J. D. in favour of the plaintiff.

2. That the plaintiff duly presented the said Cheque On 25 11. 1955 at the said Bank for payment but was dishonoured.

3. That on 18. 12. 1955 the plaintiff served legal notice on the defendant of the said dishonour, but the defendant has not paid the amount of the said cheque to the plaintiff.

4. That the cause of action arose to the plaintiff on 25. 11. 1955 and 18. 12. 1955 (date of dishonour, and of the notice).

5. That the defendant resides and personally works for gain at Delhi and hence this Hon'ble Court has jurisdiction over the suit.

6. That the value of the suit for purposes of court-fees and jurisdiction is Rs. 500 and the required court-fees has been paid.

The plaintiff claims a decree for Rs. 500 the amount of the said cheque and interest thereon at 6% P. A. from 25. 11. 1955 to 16. 1. 1956. It is also prayed that future interest on the said amount at the aforesaid rate from the date of the suit until realisation may also be awarded.

Sd /AB—Plaintiff

Through S. C. Dhanda, Pleader.

Verification:—I the above named plaintiff do hereby solemnly affirm that the facts stated above in paras 1 to 3 are true to my knowledge and belief and paras 4 to 6 are belived to be true on information received.

Verified at Delhi this day......

Sd/AB... Plaintiff

No. 4. *Suit on pronote and in the alternative on original Consideration.*

(For name of the Court etc., see plaint No. 1.)

Suit for the recovery of Rs. 2240/- on the basis of a pronote or in the alternative on original consideration.

The plaintiff states as follows :—

1. That on July 26th 1956, the defendant borrowed Rs 2,000 from the plaintiff and agreed to pay it on demand with interest at 1% P. M.

2. That as a security for the aforesaid loan the defendant executed the pronote herewith attached as exhibit 'A' on the aforesaid date payable to plaintiff on demand.

3. That Rs. 2240/- are now due from the defendant on account of principal and interest calculated up to date.

4. That the defendant has failed to pay the amount due on pronote and the interest thereof inspite of many demands by the plaintiff. The defendant was also served with a legal notice of demand.

5. That the cause of action arose to the plaintiff against the dafendant on 26 7-1956 when the pronote in suit was executed.

6. That the pronote was executed at Delhi and the defendant resides and personally works for gain at Delhi, hence this Hon'ble Court has jurisdiction to try the suit.

7. That the value of the suit for purposes of court-fees and jurisdiction is Rs. 2240/-. and the required court-fees has been paid.

The plaintiff claims :—

(i) Rs. 2240/- on the basis of the pronote and interest.

(ii) Alternatively the same amount as money lent.

(iii) Interest from date of suit to that of realization at 1 per cent per mensem.

Sd./...AB Plaintiff
Through......Counsel

Verification :—

I, the above named plaintiff do hereby solemnly

affirm that paras 1 to 4 are true to my knowledge and remaining paras are true on information received. Verified at Delhi on 26-7-1957.

Sd /- AB...Plaintiff.

No. 5 *Suit by an agent for his commission.*

IN THE COURT OF THE SENIOR SUB JUDGE DELHI.

A B s/o C D resident of 15, Civil Lines, Delhi... ......Plaintiff

Versus

EF s/o G H Prop. Modern Colonizers, Gurdwara Road, New Delhi .. ...Defendant

Suit for the recovery of Rs. 9,000 as commission.

Respectfully sheweth,

1. That by an agreement in writing, dated March 2, 1955 the defendant appointed the plaintiff as his agent for sale of an estate known as Gupta Colony and agreed to pay to the plaintiff as his commission, 3 per cent of the price received by the defendant for the said estate, in the event of the plaintiff introducing a purchaser acceptable to the defendant.

2. That the plaintiff introduced accordingly one Yash Paul Mehta as purchaser of the estate for a price of Rs 3,00,000. A sale deed was executed by the defendant in favour of the said Yash Paul Mehta, in respect of the said estate, and the said Yash Paul Mehta paid Rs. 3,00,000 in cash to the defendant at the time of registration of the sale-deed, on August 18, 1955.

3. That the defendant has not paid the commission due to the plaintiff under the terms of the agreement dated March 2, 1955.

4. That now a sum of Rs. 9,000 is due from the defendant to the plaintiff as commission which he has failed to pay inspite of many demands by the plaintiff in this

behalf. The plaintiff has also served the defendant with a registered notice of demand, the copy of the said notice and postal receipts are attached herewith.

5. That the cause of action accured on the 18th August 1955 when the estate mentioned above was sold and the defendant received the sale price.

[illegible] ade at Delhi and [illegible] works for gain [illegible] ierefore jurisdiction to take cognizance of the suit.

7. That the value of the suit for purpose of jurisdiction and court-fees is Rs. 9,000 and the required court-fees has been paid.

That the plaintiff prays that a decree be granted to him against the defendant for the payment of Rs. 9,000 and interest from date of suit to that of payment at such rate as the Court deems reasonable.

Sd/AB......Plaintiff

Through R. D. Mathur
Advocate

Verification

I, the above named plaintiff do hereby solemnly affirm that the facts stated above in paras 1 to 4 are true to my knowledge and paras 5 to 7 are believed to be true on information received.

Virified on 16-10-1955 at Delhi.
Sd/ AB......Plaintiff.

No. 6 *Suit on account stated.*

IN THE COURT OF THE SENIOR SUB JUDGE AMBALA

AB s/o CD, Oil merchant Saddar Road, Ambala.
......Plaintiff

Versus

EF s/o GH, Sugar merchant, Guru Bazar, Amrit ......Defendant.

Suit for the recovery of Rs. 1,500.

The above named plaintiff states as follows :

1. That the plaintiff carries on business as oil merchant at Ambala and the defendant carries on business as a sugar merchant at Amritsar.

2. That the plaintiff used to order from the defendant sugar from time to time on credit and the defendant used to order oil (mustard) from the plaintiff from time to time on credit.

3. That on July 20, 1957 the defendant came to the plaintiffs shop and after going through the accounts of each side, agreed that there was a balance of Rs. 1,500 in favour of the plaintiff. The said balance was entered at page 23 of the plaintiffs account book and was duly signed by the said defendant EF.

4. That the said defendant has not paid anything to the plaintiff since July 20, 1957.

5. That the cause of action accrued at Ambala where the accounts were stated and balance signed on the 20th July 1957.

6. That the accrual of the cause of action being at Ambala, hence this Hon'ble court has got jurisdiction to try the suit.

7. That the value of the subject matter of the suit for the purposes of court-fees and jurisdiction is Rs. 1,500 and the required court-fees has been paid.

The plaintiff prays that a decree be granted to him against the defendant for Rs. 1,500 with interest from the date of suit to that of payment at such rate as the court deems reasonable.

Sd/- AB Plaintiff

Through ...Counsel

Signature and verification as in plaint No. 5.

No. 7 *Suit on mutul open and current account.*

(Name of the Court and title of the suit as in Plaint No. 6).

1. That the plaintiffs carry on business as oil merchants at Ambala and the defendants carry on business as sugar merchants at Amritsar.

2 That in the month of August, 1954 AB the managing proprietor of the plaintiff firm and EF manager of the defendant firm entered into an oral agreement at Ambala that the plaintiff firm should supply to the defendant firm as much oil as the latter would order in writing, and the defendant firm should supply as much sugar to the plaintiff firm as the plaintiff firm would order in writing and that from time to time account would be made of the supplies to each of the firms by the other, and the balance due from one party to the other would be paid in cash at Ambala with interest calculated at 10% per annum.

3. That the dealings between the parties on the aforesaid agreement started from September 1954 and continued upto September. 16, 1957 and during this interval oil worth Rs. 15,500 was supplied to the defendant firm by the plaintiff firm and sugar worth Rs. 9,500 was supplied to the plaintiff firm by the defendant firm, thus leaving a balance ... t firm. Full parti- ... the list attached

4. That the aforesaid mutual account of the parties has been kept according to calender year and the last item in the said account is of 16-12-1957.

5. That the cause of action accrued to plaintiff in favour of the defendant on 16-12-1957.

... ntered into at
Ambala, this
matter.

7. That the value of the suit for the purposes of court-fees and jurisdiction is Rs. 6,000 and the required court-fee has been paid.

It is therefore prayed that a decree for Rs. 6,000 with costs be passed in favour of the plaintiff against the defendant.

[Signatures and verification as in plaint No. 7 paras 1 to 4 "to knowledge" and 5 to 7 "to belief".]

No. 8 *Suit for rendition of accounts.*

IN THE COURT OF.........

1. Ram Parkash s/o...resident of...caste..
2. Chaman Lal s/o " "
3. Karam Chand s/o " "
4. Bhag Ram s/o " "

} Plaintiffs

Versus

Prem Kumar s/o resident of.........Caste.........
...Defendant.

Suit for rendition of accounts.

The above named plaintiffs state as follows :—

1. That the plaintiffs are members of an unregistered social and literary club called the the Jaipuria Social and Literary Club of......which has 70 members and open to all the residents of the locality named......

2 That the plaintiffs after having obtained the permission, of the court under O. 1, r. 8 of C. P. C. have instituted this suit on behalf of and for the benefit of all the members of the club.

3 That upto......the defendant was the General Secretary of the said club and so was incharge of all the books, accounts and funds of the club.

4. That on the......the defendant absented himself from duty and has not since returned to work and the books of the club are in a state of confusion and its funds are not traceable.

5. That inspite of general requests of demand the defendant has not rendered any account of the funds in his custody to the members of the Club. A legal notice to this effect was also served on the defendant (Copy and postal receipts are attached herewith).

6 That the cause of action arose to plaintiffs in favour of the defendant at......within the jurisdiction of this Hon'ble Court and the defendant permanently resides and personally works for gain at... hence this Hon'ble Court has jurisdiction to take cognizance on the suit.

7. That the value for the purposes of court-fees and jurisdiction is Rs...... and a court-fee of Rs...... has been paid and will pay additional court-fees for any additional amount that may be found due from the defendant after the accounts have been taken.

That the plaintiffs claim a decree against the defendant for—

(i) the accounts of all the monies received by him.

(ii) the amount that may be found due as a result of such accounts

(iii) costs of the suit and

(iv) any other relief that the Court may deem reasonable.

[Signature and Verification]

No. 9. *Suit for Administration by a creditor on behalf of himself and all other creditors.*

IN THE COURT OF THE SENIOR SUB JUDGE JULLUNDUR

Girdhar Krishan Son of.........Caste.......resident of.........Jullundur......... ......Plaintiff

Versus

Satish Chandar Son of.........Caste........resident of.........Jullundur......... ......Defendant.

Suit for Administration of the estate of the late Gian Chand Daug of......, by the creditor. Plaintiff on behalf of himself and all other creditors

Draft a plaint in a suit for adminstration by a creditor on behalf of himself and other creditors [P. U. 1953]

Respectfully sheweth :—

1. That the late Gian Chand Daug of......... Jullundur was at the time of his death, and his estate still is indebted to the plaintiff in the sum of Rs. 1,000 with interest at ... percent per annum under a promissory note dated 3-7-1955, executed by him for cash consideration in full in favour of the plaintiff.

2 That Gian Chand Daug aforesaid died on the 15th May, 1953. By his last will dated 10th April, 1957, he appointed the defendant his sole executor.

3. That the said will was proved by the defendant in the Court of.........on.........

4. That the defendant has possessed himself of all the movable and immovable property of the said Gian Chand Daug, but has not paid the plaintiff his debt. The total amount now due to the plaintiff on account of principal and interest is Rs.........

5. That cause of action arose to the plaintiff against the defendant on......when the pronote was granted on 3-7-1955 the date of the pronote, and as the property is situated, in Jullundur, where also the defendant resides, this Court has jurisdiction.

6. That the value of suit for purpose of court fees is Rs.........and for jurisdiction....

That the plaintiff claims that an account may be taken of the movable and immovable property of Gian Chand Daug deceased and the same may be administered under the decree of Court.

Sd/- Girdhar Krishan s/o ...Plaintiff

Through Shri B. J. Nayyar, Advocate.

Verification.

I, Girdhar Krishan the above named plaintiff do

5. That inspite of general requests of demand the defendant has not rendered any account of the funds in his custody to the members of the Club. A legal notice to this effect was also served on the defendant (Copy and postal receipts are attached herewith).

6 That the cause of action arose to plaintiffs in favour of the defendant at......within the jurisdiction of this Hon'ble Court and the defendant permanently resides and personally works for gain at... hence this Hon'ble Court has jurisdiction to take cognizance on the suit.

7. That the value for the purposes of court-fees and jurisdiction is Rs...... and a court-fee of Rs...... has been paid and will pay additional court-fees for any additional amount that may be found due from the defendant after the accounts have been taken.

That the plaintiffs claim a decree against the defendant for—

(i) the accounts of all the monies received by him.

(ii) the amount that may be found due as a result of such accounts

(iii) costs of the suit and

(iv) any other relief that the Court may deem reasonable.

[Signature and Verification]

No. 9. *Suit for Administration by a creditor on behalf of himself and all other creditors.*

IN THE COURT OF THE SENIOR SUB JUDGE JULLUNDUR

Girdhar Krishan Son of.........Caste.......resident of.........Jullundur......... ......Plaintiff

Versus

Satish Chandar Son of.........Caste........resident of.........Jullundur......... ......Defendant.

Draft a plaint in a suit for administration by a creditor on behalf of himself and other creditors (P. U. 1953)

Suit for Administration of the estate of the late Gian Chand Daug of......, by the creditor. Plaintiff on behalf of himself and all other creditors.

Respectfully sheweth :—

1. That the late Gian Chand Daug of......... Jullundur was at the time of his death, and his estate still is indebted to the plaintiff in the sum of Rs. 1,000 with interest at ... percent per annum under a *promissory note* dated 3-7-1955, *executed* by him for cash consideration in full in favour of the plaintiff.

2 That Gian Chand Daug aforesaid died on the 15th May, 1953. By his last will dated 10th April, 1957, he appointed the defendant his sole executor.

3. That the said will was proved by the defendant in the Court of.........on.........

4. That the defendant has possessed himself of all the movable and immovable property of the said Gian Chand Daug, but has not paid the plaintiff his debt. The total amount now due to the plaintiff on account of principal and interest is Rs.........

5. That cause of action arose to the plaintiff ... ie pronote was ... pronote, and as ... where also the ... diction.

6. That the value of suit for purpose of court fees is Rs.........and for jurisdiction....

That the plaintiff claims that an account may be taken of the movable and immovable property of Gian Chand Daug deceased and the same may be administered under the decree of Court.

Sd/- Girdhar Krishan s/o ...Plaintiff

Through Shri B. J. Nayyar, Advocate.

Verification.

I, Girdhar Krishan the above named plaintiff do

hereby solemnly affirm that the contents of paras 1 to 4 of this plaint are true and correct within my personal knowledge and contents of paras 5 and 6 of this plaint are believed to be correct from information received.

Verified on 15-1-1958 at Jullundur

Sd/- Girdhar Krishan. ......Plaintiff

No. 10 *Suit for the recovery money*

IN THE COURT OF THE SENIOR SUB JUDGE, DELHI.

A borrowed a sum of Rs. 15,000/- from B for the purchase of a house in Delhi. B advanced the amount to A by a cheque on the Lloyds Bank Ltd., New Delhi. A subsequently died, leaving a widow, one son and one daughter. Draft a plaint against such persons as be liable for the recovery of the said sum with interest at 6 % per annum. [D. U. 1950]

Shree Kamta Prasad son of Amba Prasad, Vaish Aggarwal of 36, Rohtak Road, Delhi. ......Plaintiff

Versus

(1) Shree Din Dayal, son, and (2) Smt. Bhagwanti, widow, of Rameshwar Dayal, caste Khatri, of House No 2496/X, Daryaganj, Delhi.

......Defendants.

Suit for the Recovery of Rs. 15,900.

Respectfully sheweth :—

1. That the late Shri Rameshwar Dayal borrowed from the plaintiff Rs. 15,000 on 10-3-56 agreeing to repay the money within six months with interest at 6 per cent per annum The plaintiff advanced the amount by his cheque No. B. 01235 dated 10-3-56 on the Lloyds Bank Ltd., New Delhi; which cheque was got cashed by the defendant. The plaintiff is not a moneylender.

2. That Shri R. Dayal raised the said loan in order to purchase a house in Daryaganj Delhi, which house was in fact purchased by him. Shri R. Dayal died on 18-5-56 leaving behind him son and a widow, the present defendants, and a daughter. The defendants are in law the heirs of the late Shri R. Dayal and have an equal interest in the house purchased by R. Dayal as also in other property left behind by him, and are therefore liable for the amount in suit.

3. That the plaintiff is entitled to recover from the defendants Rs. 15,000 as the principal amount and Rs. 900 as interest at 6 per cent. per annum, the agreed rate.

4. That a notice was served upon the defendants by registered post on 16-2-57 demanding payment within a week of receipt thereof, but the defendants have failed to pay. Cause of action arose against the defendants on 16-2-57 when the payment was not made as demanded. As the defendants ordinarily reside in Delhi, the Civil Court in Delhi have jurisdiction to try the suit

5. That the value of the suit for purposes of court-fees and jurisdiction is Rs 15,900 and the required Court-fees has been paid.

The plaintiff therefore claims a decree for payment of Rs. 15,900 with costs of the suit and further interest at the rate of 6 per cent. per annum from the date of the suit till payment in full.

Kamta Prasad, Plaintiff:
Through A. B. Advocate.

Verification

Paras No. 1, 2 and the first part of Para No. 5 are true to my knowledge and the remaining paras are correct to my belief. Verified at Delhi, this 10th day of March, 1958.

Sd/. *Kamta Prasad*
Plaintiff.

No. 11. *Suit by an assignee of a debt.*

(Name of the Court)

AB s/o CD resident of.........Caste.........Plaintiff

Versus

1. EF s/o GH resident of......Caste......Defendant
2. IG s/o KL " " "

Suit for the recovery of Rs. 560.

Respectfully sheweth,

Prepare draft of a plaint by an assignee of a bond [P. U 1950]

1. That the defendant No. 1 borrowed Rs. 500 from the defendant No. 2 on a bond dated N vember 10, 1956 and agreed to repay the loan, with interest at 1 per cent per annum, within six months of the date of the bond.

2. That the defendant No 2 assigned the debt due under the said bond from the defendant No. 1 absolutely to the plaintiff by a sale deed dated July 20, 1957.

3. That the defendant No. 1 has not paid the debt due from him or any part thereof.

4 That the cause of action arose to the plaintiff on November 10, 1956 when the bond was executed and again on 20-7-1957 when the debt in question was transferred.

5. That as the debt was transferred at Delhi, this Hon'ble Court has jurisdiction to try the suit.

6. *That the value of the suit for the purposes* of court-fees and jurisdiction is Rs 560 and the required court-fees has been paid.

The plaintiff prays :—

(i) A decree against defendant No. 1 for Rs. 500 on account of principal, and Rs. 60 on account of interest upto the date of the suit.

(ii) If the said defendant No 1 proves that he [illegible] to defendant No 2 [illegible] interest from the date of such payment to the date of suit at 1 per cent permensum against defendant No. 2.

(iii) Interest from date of suit to that of payment at such rate as the Court deems reasonable.

(iv) Costs of the suit

[Signature and verification paras-1 to 3 to "knowledge" and paras 4 to 6 to "belief".

No. 12 *Suit for injunction to restrain nuisance*

.[Name of the Court and Title of the Suit.]

Draft a plaint in a suit for an injunction to restrain nuisance. P.U.1953-55]

The above-named plaintiff submits as under :—

1. That the plaintiff is, and at all times hereinafter mentioned was, the obsolute owner of house No..........., Street, Ludhiana.

2 That the defendant is, and at all times hereinafter mentioned was, the absolute owner of the house No..........., in the same street adjoining the plaintiff's aforsaid house.

3. That on the 13th August 1957, the defendant started in his said house a factory for manufacture of cycle parts. This factory is run by steam power, day and night. An immense volume of noxious smoke is emitted at all times by it and the house of the plaintiff remains smoke enveloped so that breathing becomes, impossible and all house-hold goods and effects become blackened. The working of the steam engine and other machinery causes terms in the walls of the plaintiff's house and its safety is threatened. The noise emanating from the factory makes sleep impossible.

4. That in consequence the plaintiff has been compelled to abandon his aforesaid house, and to live in great trouble in a rented] room.

5 That the cause of action arose to the plaintiff against the defendant at Ludhiana on 13-8-57 when the nuisance started. The defendant also resides in Ludhiana. The Court has therefore jursidiction to try the suit.

6. [Valuation for court-fees and jurisdiction]

The plaintiff therefore prays that the defendant be restrained by injuntion, from committing or permitting any further nuisance.

[Signature and verification]

Paras 1 to 4 to knowledege and rest to belief.

No 13. – Suit for mandatory injunction.

In the Court of the Senior Sub judge, Delhi.
Jugul Kishor son of......... caste.........resident of 14, Darya Ganj, New Delhi

.........Plaintiff.

Versus

Abdul Majid son of.........caste.........resident of 15, Darya Ganj, New Delhi.

.........Defendant

Suit for mandatory injunction and damages.

The plaintiff submits as under :—

Jugul Kishore owned a house in Delhi and Abdul Majid who owned a plot of land adjoining that house, erected on it a factory for manufacturing fire works, and caused various kinds of nuisance. Jugul Kishore had to abandon the house on account of the nuisance, and also could not fix any tenant for the same. *Please draft* a plaint on behalf of

1 That the plaintiff is, and at all times hereinafter mentioned was the absolute owner of house No. 14 Darya Ganj New Delhi.

2. That the defendant is, and at all times hereinafter mentioned was, the absolute owner of Plot No 15 Darya Ganj, New Delhi in the same street adjoining the plaintiff's aforesaid house

3. That on 10th September, 1957, the defendant started in his said plot a factory for manufacture of fireworks. An immence volume of noxious smoke is omitted at all times by it and the house of the plaintiff remains somke enveloped so that breathing becomes impossible and all house-hold goods and effects become blackened The noise emanting from the factory makes sleep impossible.

4. That in consequence the plaintiff has been compelled to abandon his aforesaid house, and to live in great trouble in a rented room

5. That due to this nuisance the plaintiff could not fix any tenant for the said house and the defendant is liable for damages That the plaintiff called upon the defendant by a registered

notice dated—to pay Rs 1000/ as damages on account of nuisance, but the defendant has refused.

Jugal Kishore for restraining Abdul Maji[d] from commi[t]ting nuisance and fo[r] *claiming* Rs 1,000/- as damages [D. U. 1954]

6. That the cause of action arose to the plaintiff against the defendant at Delhi on 10 9. 57. when the nuisance started. The defendant also resides at Delhi. The Court has therefore jurisdiction to try the suit.

7 That the value of the suit for purposes of court-fees and jurisdiction is Rs 1000/-

The plaintiff therefore prays that the defendant be restianed by a mandatory injuction from committing or permitting any further nuisance and a decree for Rs 1,000 be awarded for damages in favour of the plaintiff against the defendant.

[*Signature and Verification. Paras 1 to 4 to* knowledege and the rest to belief].

No. 14 *Suit for ejectment*

IN THE COURT OF THE SENIOR SUB JUDGE, DELHI.

A son of X, Caste Aggarwal, of 53,—Road, New Delhi. ......Plaintiff

Versus

B son of Z,. caste Vaish, of 26,—Road, New Delhi. ......Defendant.

Claim for the ejectment of the defendant.

The Plaintiff submits as under:—

1. That the defendant obtained on lease from the plaintiff the premises known as Bungalow No. 26,—Road, New Delhi, bounded on the North by—, on the East by—, on the South by—and on the West by—, and marked in red in the plan annexed to this plaint on a monthly rent of Rs. 300 for a period of 11 months commencing on 1-1-1956 under an oral lease and executed in favour of the plaintiff rent note dated 2-1-1956 embodying a

memorandum of the terms and conditions of the lease settled orally on 1-1-1956. Possession of the premises was given to the defendant in pursuance of the oral lease on 1-1-1956. The rent note is filed with the plaint The tenancy is monthly and commences with the first day of each calendar month

Draft a plaint, in a suit for ejectment, by a landlord against a tenant, occupying a bungalow in New Delhi, on a rental of Rs 300/- p m., month of tenancy being an English Calendar month, and the tenant being a tenant at will. Also state how the suit will be affected by the present law force n Delhi. [D. U. 1949.]

2. That the Bungalow aforesaid is required by the plaintiff for his own use and occupation. The plaintiff is living in a small three roomed tenement at the address given above, which is altogether insufficient for his family of ten, particularly as the two eldest sons of the plaintiff have been married recently. The plaintiff terminated the defendant's tenancy by a notice of ejectment dated 11-12-57 served on the defendant on 13-12-57 requiring him him to vacate the premises by the midnight of 31-12-57 and to hand over to the plaintiff possession thereof by the morning of 1-1-58. The defendant has not complied with the notice, hence the suit. A copy of the notice together with the defendant's acknowledgement of receipts are filed with the plaint

3. That the defendant is liable to ejectment on facts stated in para 2 above. Cause of action accrued to the plaintiff against the defendant on 1-1-58 when possession of the bungalow was not delivered to him.

4. That as the cause of action arose in Delhi, the defendant resides in Delhi and the bungalow in suit is situate in Delhi, this Hon'ble Court has jurisdiction to try the suit.

Draft a plaint in a suit for possession of a house [P. U. 1949, 1951]

5. That the value of the suit for the purposes of court-fees and jurisdiction is Rs. 3,600/- being twelve months' rent.

The plaintiff claims a decree for ejectment of the defendant from Bungalow No 26, described in Para 1 of the plaint and delineated and marked in

red in the plan attached hereto with the costs of the suit.

Sd/- A,
Plaintiff

through P, Advocate

Verification

Paras 1 and 2 of the above plaint are true to my knowledge and paras 3 and 4 are so to my belief. Verified at Delhi, this 15th day of January, 1958.

Sd/- A

Plaintiff.

Under the present local law relating to ejectment, eviction of tenants can be had only on certain grounds, such as failure to pay rent, using the premises for a purpose other than that for which they were let, causing damage to the property let or the premises being reasonably and *bona fide* required by the landlord for his own use. A tenant cannot be ejected merely on the ground that his tenancy has been terminated by a valid notice of ejectment or otherwise. When a tenancy is forfeited by non-payment of rent, the tenant can escape ejectment by depositing in Court the arrears of rent together with the costs of the suit on the first day of hearing.

No. 15 *Suit for ejectment and for recovery of rent.*

IN THE COURT OF THE SENIOR SUB JUDGE, DELHI.

A son of X caste Aggarwal,' of 31, Siri Ram Road, Civil Lines, Delhi. ...Plaintiff

Versus

B son of Y caste Khatri, of No. 2, Boulevard Road, Civil Lines, Delhi. ...Defendant.

Claim for ejectment and for recovery of Rs. 690 as arrears of rent, electric charges, etc.

A owes a bungalow in the Civil Lines, Delhi He has leased it out to B at a monthly total of Rs. 200/- per mensem

besides house-tax. The tenant is to pay all water and electric charges etc. The month of tenancy is an English calendar month. A desires to evict B and has given the requisite notice. Three month's rent is also due. Draft out a plaint for ejectment and the recovery of arrears of rent. [D. U. 1951]

Respectfully sheweth :—

1. That the defendant took on lease from the plaintiff on 1-5-1956 the premises known as No 2, Boulevard Road, Civil Lines, Delhi, bounded on the North by public road, on the East by the property of the Notified Area Committee, Civil Lines, Delhi, on the West by Bungalow No. 4. Boulevard Road and on the South by open space, marked in red in the plan annexed to this plaint, under an oral lease agreeing to pay rent at Rs. 200/-per mensem, besides all electric and water charges and the house tax. The tenancy was at will. The defendant entered into possession in pursuance of the oral lease aforesaid on 1-5-1956.

2. That the defendant was irregular in payment of rent. He also constructed without the consent or knowledge of the plaintiff a shed marked X in the plan and also opened two doors in the room marked Y in the said plan and closed the existing opening shown as Z in the plan. The parapet wall, which at the time of letting was 4 feet high was reduced to a height of one foot, again without the knowledge or consent of the plaintiff. Rent for the months of January and February, 1957 was also, contrary to the terms of the tenancy, not paid, nor were the electric and water charges cleared

3. The plaintiff served upon the defendant on 5-3-57 a notice terminating the tenancy with effect from the midnight of 31-3-57 on the facts stated in para 2 above, and requiring him to pay Rs. 600 as the arrears of rent for the 3 months January to March 1957 along with Rs. 36 as the house tax and Rs 54 as the water and electric charges and to deliver the possession of the property leased back to the plaintiff on the morning of 1-4-57. A copy of the notice and the original acknowledgement of receipt of the notice are filed with the plaint. The defendant has not complied with the just demands of the plaintiff.

4. That the defendant is liable to be ejected

for non-payment of rent and for making without the plaintiff's consent material alterations in the property leased to him, and his tenancy stands terminated by the notice. He is also liable to pay the plaintiff Rs. 690 as arrears of rent, house-tax, etc., as detailed in Para 3 above.

A who is a lessee has not paid rent for the house to his landlord B for two years. B wishes to file a suit for the suit due and ejectment Draft a plaint. (P. U. 1948, 1949).

5. That cause of action arose to the plaintiff against the defendant as to the relief of ejectment on 1-4-1957 when the possession was not delivered back by the defendant as demanded and as to the rent on the first day of January to March, 1957, when the rent became due for the respective months in advance. As the cause of action arose in Delhi, the defendant resides in Delhi and the premises in suit are situate in Delhi, this Hon'ble Court has jurisdiction to try the suit.

6. That the value of the suit for purposes of court-fees as to the relief of ejectmant is Rs. 2400, being 12 months' rent, and Rs. 690 as to the relief for recovery of arrears and separate court-fees have been paid on these amounts. The value for jurisdiction is Rs. 3,090.

The plaintiff therefore claims—

(a) A decree for ejectment of the defendant from the property known as bunglow No. 2, Civil Lines, Delhi, bounded as described in Para 1 above and marked and delineated in red in the plan annexed to the plaint ;

(b) a decree for the *recovery of Rs. 690 from the* defendant ; and

(c) the costs of the suit.

Sd/- A
Plaintiff.
through Counsel

Verification

[Paras 1 to 4 'to knowledge'; rest 'to belief.']

No. 16. *Suit by a mortgagee for sale or foreclosure.*

IN THE COURT OF THE SENIOR SUB JUDGE DELHI

Draft a plaint for recovery of a sum of Rs. 50,000 as principal and interest on the basis of an equitable mortgage of three bungalows in Civil Lines, Delhi. The plaint should be properly signed and verified. D. U.1957]

The Bank of Punjab and Delhi Limited, a banking company with its Registered Office at 9- M, Connaught place, New Delhi ....Plaintiff

Versus

Mohd. Yasin son of Mohd Ibrahim, Thread Balls Merchant, Sadar Bazar, Delhi ......Defendant.

Suit for the Recovery of Rs. 50,000/- as principal and interest due under an equitable mortgage.

The plaintiff respectfully submits as under:—

1. That the plaintiff is a limited banking company registered under the Indian Companies Act, 1913, with its Registered Office at 9-M, Connaught Place, New Delhi. Mr. J. D. Johar is the manager of the plaintiff Bank and its principal officer who is conversant with and able to depose to the facts of this case and is authorised by a resolution of the Board of Directors dated 20. 12. 56 to file this suit and is competent to sign and verify the plaint.

2. That the plaintiff is an equitable mortgagee of three bungalows owned by the defendant and situated in Civil Lines, Delhi.

3. That the particulars of the mortgage are as under:—

(*a*) *Date: 1. 4. 56*

(*b*) *Name of mortgagor:* Mohd Yasin son of Mohd Ibrahim.

Name of mortgagee: The Bank of Punjab and Delhi, Ltd,.

(*c*) *Sum secured:* Rs. 48, 000, principal.

(*d*) *Rate of interest:* 6 per cent per annum, simple interest.

(*e*) *Property subject to mortgage :* Three bungalows No. 8, 10, and 12 Boulevard Road, Civil Lines Delhi, adjoining one another being bounded on the North by open land belonging to Notified Area Committee, Civil Lines, Delhi ; on the East by the property of L. Chhagnu Mal, on the South by Road and the West by bunglow of Shri Anil Bose.

(*f*) *Sum now due* : Rs. 50,000.

4. That the plaintiff called upon the defendant by a registered notice dated 1. 11. 56 to pay the sum due under the mortgage, but the defendant has failed to do so. Cause of action accrued to the plaintiff against the defendant on 1. 4. 56, when the mortgage was created and on 8. 11. 56 when the amount due was not paid in spite of demand. As the defendant resides and carries on business in Delhi, the property is situated in Delhi and the cause of action also arose in Delhi, this Court has jurisdiction to try the suit.

5. That the value of the suit for purposes of court-fees and juridiction is Rs. 50,000.

It is therefore prayed that a decree for payment of Rs. 50,000 to the plaintiff by the defendant or in default for the sale of mortgaged property be passed in favour of the plaintiff against the defendant with costs and further interest at 6 per cent per annum ; and in case the proceeds of the sale are found insufficient to pay the amount due to the plaintiff, then liberty be reserved to the plaintiff to apply for a decree for the balance.

For the Punjab & Delhi Bank. Ltd.
Plaintiff,

Sd/- J. D. Johar
Manager and Principal Officer.

Verification.

Paras 1 to 3 of the plaint are true to my

knowledge while paras 4 and 5 are so to my belief, verified at Delhi this 11th day of December 1956

For the P. &. D. B Ltd. Plaintiff
sd/Manager

No. 17. *Suit far redemption.*

[Title of the Suit]

Suit for Redemption of Property mortgaged.

The plaintiff submits as under :—

Draft a plaint in a suit by a mortgagor for redemption of the immovable property mortgaged by him. [P U. 1952]

1. That the plaintiff is the mortgagor of a house in Delhi and the defendant is the mortgagee with possession

2. That the particulars of the mortgage are as under :—

See paint No 16.

3. That the defendant has taken possession of the mortgaged property and has been receiving and realising the rents and profits of the property.

4. That cause of action arose to the plaintiff against the defendant on ——, the date of the mortgage and on—when the defendant did not comply with the plaintiff's demand for redemption.

5. That the value of the suit for the purposes of court-fees and juridiction is Rs. 5,000/, the principal amount of mortgage money.

The plaintiff claims to redeem the property and to have the same reconveyed to him and to have possession thereof.

Sd/-

[Signature] and *Verification* As in Paint No—. 16]

No. 18. *Suit for the cancellation of mortgage deed on the basis of undue influence etc.,*

[Title of the suit]

The plaintiff respectfully submits as under :—

1. That plaintiff and his father constituted a joint Hindu family governed by the Benares school of Mitakshara Law and the plaintiff is the sole surviving coparcener after the death of Shri Pritam Chand, his father on 7-4-1950.

2. That the late Shri Pritam Chand was addicted to gambling and having lost Rs. 1,000 to Kedar Nath, defendant in the course of gambling, he executed on 10-7-45 a promissory note for Rs. 1000 agreeing to pay interest at 12 per cent per annum. On 15-12-47 he was made to pay Rs. 1000 towards interest and endorsed that payment on the back of the pronote. On 20-3-1949, Shri Pritam Chand, in consideration of the balance of Rs. 1,353 due under the said pronote, executed in favour of the defendant a mortgage deed, mortgaging with possession a double-storied pucca built house No. 485, Ward VI, Kucha Kallu, Delhi, bounded on the North by ..., on the East by ..., on the South by...and on the West by..., and described in the plan attached to the plaint, owned by the joint family, and got deed registered the same day.

Pritam Chand borrowed Rs. 1000 from Kedar Nath on a pronote dated 10th July 1945 and agreed to pay interest at 12 per cent per annum. On 15th Dec., 1947 he paid Rs. 100 towards interest and on 20th March, 1949 he mortgaged his house with possession to Kedar Nath in lieu of the balance due on the pronote. Pritam Chand died on 7th April, 1950 His son Hari Chand wants to file a suit for cancellation of the mortgage deed and for possession

3. That the said mortgage was executed under in-undue fluence and coercion of the defendant and was entirely without any legal necessity. The debt alleged to be consideration therefor was incurred in the course of gambling. The defendant is in wrongful possession of the property.

. . . .

accrued to the plaintiff against the defendant on 20-3-49, the date of the mortgage, and on..., when the defendant did not comply with the demand made in the notice.

5 That the value of suit for the purposes of court-fees and jurisdiction is Rs. 1000.

over the house, alleging that his father was addicted to gambling and had lost Rs 1000 to Kedar Nath. The pronote had been executed in consideration of this sum and the mortgage deed had been executed under undue influence and coercion. Please draft the plaint on behalf of Hari Chand with proper verification. [D. U. 1953]

The plaintiff therefore prays that the mortgage deed be declared null and void and cancelled and as a consequential relief the possession of the mortgaged house described in para 2 of the plaint and delineated in the plan attached hereto be given to the plaintiff.

Sd/—
Plaintiff
through...Counsel

Verification [Paras 1 to 3 and first part of Para 4 'to knowledge' and rest ' to belief'.]

No. 19 *Suit for setting aside and cancellation of a deed of relinquishment.*

Draft a plaint for setting aside a deed of relinquisement executed by a purdanashin woman, on the ground of her not having understoods its content and her consent

[Name of the Court and title of the Suit].

Suit for setting aside and Cancellation of a deed of relinquishment.

Respectfully Sheweth :—

1. That the plaintiff is an issueless Hindu widow, is illiterate and does not appear in public or deal with her property except through agents. She is not well-versed in the ways of the world. The defendant is the only son of the plaintiff's late husband's brother and is thus the next reversioner. The plaintiff as the widow of the late -, has a life estate in and is in possession of three houses in Delhi, being house Nos.—, — and —in Gali Patti Ram, Bazar Sita Ram, Delhi and in 200 bighas of agricultural land in village Jasola, Delhi. The properties were being managed by the plaintiff through the defendant, and rents and profits realised through him.

2. That the defendant in November last brought to the plaintiff a stamped paper and represented to her that it was a power of attorney intended to confer on him the power of filing suits against certain tenants who were not paying the rent regularly and required her to sign the said paper. The plaintiff could not read the deed and

believing the aforesaid representation of the defendant, she thumb-marked it. A short time thereafter, the defendant brought another person who asked the plaintiff whether she had thumb-marked the paper and on her saying that she had, he also signed it.

having been obtained by fraud and misrepresentation. D. U. 1949

3. That about a week back, one X, the tenant of one of the houses owned by the plaintiff, came to the plaintiff, and told her that the defendant had threatened him with eviction if he did not agree to an enhancement of rent and on the tenant's stating that he would complain to the plaintiff, had further rejoined that she had relinquished all her rights in the property and had nothing to do with it. The defendant, on being questioned by the plaintiff in this matter the same evening, boldly averred that she had executed the deed of relinquishment on receipt of Rs. 10,000/- from him.

4. That the deed of relinquishment aforesaid is void having been got executed by fraudulant misrepresentation made by the defendant and if left [illegible] the defendant [illegible] by a notice [illegible] required the defendant acknowledge the deed to be void and to deliver it back to her, but he has not done so. Cause of action accrued to the plaintiff against the defendant in November last when the deed was fraudulently got executed.

5. That the value of the suit for court-fees is fixed by the plaintiff at Rs. 300 and the value for jurisdiction is the same.

It is therefore prayed that the aforesaid deed of relinquishment declared to be void and ineffective and by way of consequential relief, it be got delivered up and cancelled.

[Signatures and Verification]

No. 20. *Suit for dissolution of partnership and accounts.*

(Name of the Court and title of the suit).

The plaintiff states as follows :—

1. That on the day of ..the plaintiff and the defendants entered into partnership in the business of manufacturing cycle parts and verbaly agreed that the business should be run at Delhi under the name of Johar Cycle Manufacturing Company. The firm is registered under the Partnership Act, 1932.

2 That according to the conditions of the partnership each partner was to contribute equally to the capital of the partnership and was to devote the whole of his time to the business of the partnership Also each partner was to share in the profits and losses of the partnership. The copy of partnership deed is submitted here-with as Exhibit 'A'.

3. That several disputes and differences have risen between the parties and it has become impossible to carry on the business of the partnership for the benefit and advantage of the partners.

4. That the parties are unable to agree among themselves to an amicable dissolution and accounts of the said partnership.

5. That the plaintiff served the defendents with legal notices on.. asking them to meet and settle the disputes of the partnership but no action there on has been taken by them. The copy of the said notices and postal receipts are attached herewith

6. That cause of action arose on...and this Hon'ble Court has jurisdiction to try this suit as the firm carries on business with in its jurisdiction.

7. That the plaintiff has tentatively fixed the value for the purposes of court-fees at Rs....and for purposes of jurisdiction at Rs...and will pay addi-

tional court-fees on the total amount that may ultimately be found by the Court to be due to him.

The Plaintiff claims ;

1. dissolution of the Partnership ;

2. that accounts be taken, and

3. that receiver be appointed.

Signed and verified.

N. B.—In suits for the winding up of any partnership, omit the claim for dissolution and instead insert a paragraph stating the facts of the partnership having been dissolved.

No. 21. *Breach of Agreement to Purchase Land.*

[Title]

A, B, the above-named plaintiff, states as follows :—

1. On the day of...1957 the plaintiff and defendant entered into an agreement, and the original document is hereto annexed. [Or, on the day of 1957 the [illegible] agreed that [illegible] defendant and [illegible] from the plaintiff forty bighas of land in the village of...for...Rupees]

2. On the...day...of 1957 the plaintiff being then the absolute owner of the property and the [illegible] as was made [illegible] to the defen- [illegible] of transfer of the same [or was ready and willing, and is still ready and willing and offered, to transfer the same to the defendant by a sufficient instrument]. On the payment by the defendant of the sum agreed upon.

3. The defendant has not paid the money.

4. [Facts showing when the cause of action arose and that the Court has jurisdiction.]

5. [Value of the subject matter of the suit for the purposes of jurisdiction and court-fees].

6 [Relief claimed]

[Signature and Verification].

No. 22. *Suit for declaration.*

A obtains a decree against B and attaches *certain* property alleged to B. C files n objection under 0.12 R. 58 C. P. C. that he is the certified purchaser of the said property, having purchased the same at an auction sale held in execution of a decree obtained against B by D. The objection is allowed by the Court. A wishes to file a suit against B and C alleging that C was merely the "Benamidar" of B and the

IN THE COURT OF THE SENIOR SUB JUDGE, DELHI.

A s/o X caste......aged......resident of......plaintiff

Versus

I C s/o Y caste......aged......resident of...........
Defendant No. 1

2. B s/o Z caste......aged......resident of........
Defendant No. 2.

Suit for declaration that C, defendant no. 1 is only benamidar of the property in dispute and the real owner is B, defendant no. 2.

The above named plaintiff submits as under:—

1. That on ....a *decree for Rs.........with* costs was passed by the Court of Shri XYZ sub-Judge, Delhi, in favour of the plaintiff against the defendant no. 2.

2 That in execution of the said, decree, plaintiff got attached the House No.........situated at..............belonging to the defendant no 2.

3. That in the execution proceedings defendant no. 1 filed an objection under O. 21 Rule 58, that the property in dispute does not belong to defendant no. 2 but is owned by defendant no 1 and alleged that the said property was purchased by defendant [illegible] the Court of Shri [illegible] ion of the Decree [illegible] vs. B.

4. That on.........the Court of XYZ Sub Judge, Delhi, up-held the objection of defendant no. 1 and dismissed the execution petition of the plaintiff.

5. That the property in dispute does not belong to defendant no. 1 but is owned by defendant no. 2. The defendant no. 2 purchased the said property in the name of defendant no. 1, only to put a cloak on the real transaction and in order to defeat the other creditors of defendant no. 2

property is liable to attachment and sale in execution of the decree of A against B. Please draft the plaint for A. [D.U. 1955]

6. That the cause of action arose to the plaintiff on.........when the Court of Shri XYZ Sub-judge, Delhi, up-held the objection of the defendant no. 1 and dismissed the execution petition of the plaintiff.

7. That the value of the suit for the purpose jurisdiction is Rs.........being the value of the property in dispute and a court-fees of Rs 15/- for declaration has been paid.

8. That the defendants reside in Delhi and also the property in dispute is situated at Delhi ; hence this honourable Court has jurisdiction to entertain this suit

It is, therefore, prayed that a decree declaring that the House No......situated at......is owned by defendant no. 1 is only the benamider, be passed in favour of the plaintiff against the defendants no. 1 and no. 2 with costs of this suit and any other relief be also awarded to the plaintiff to which found entitled.

Sd/- Plaintiff.
Through
Counsel.

Verification.

Verified at Delhi on......that the contents of paras 1 to to 5 are true to my knnwledge and belief and the paras 6 to 8 are believed to be true on information received.

Sd/Plaintiff

No. 23 *suit for the recovery of goods purchased or in the alternation for refund of purchase money.*

Draft a plaint in a suit for the recovery of goods purchased or in the alternative for refund of purchase money D U. 1954.

IN THE COURT OF JUDGE, SMALL CAUSES, DELHI

Sant Lal, s/o --aged-- caste --resident of-
Plaintiff.

Versus

1 Pratap Chand, proprietor, Messrs----- Kashmere Gate, Delhi. Defendant No. 1.

2. Chuni Lal s/o---aged---caste--- resident of--- Defendant No. 2

Suit for Rs. 300/-

The above named plaintiff submits as under:-

1 That the plaintiff purchased a cabinet from defendant No. 1. for Rs 300/ (which was paid to the defendant at the time of the sale) and told the defendant No. 1. that the plaintiff shall take the delivery after some time.

2. That when the plaintiff approached the defendant No. 1 for the delivery of the said cabinet, the *defendant No. 1* refused, and informed the plaintiff as he did not turn up to take the delivery earlier, the cabinet has been sold to defendant No 2.

3. That the plaintiff had paid the purchase price of the cabinet and the defendant No. *1 was only a bailor of the cabinet* and had no right to sell the cabinet to defendant No. 2.

4. That the defendant No. 2. has been impleaded, as the purchaser of the cabinet, who is liable to return the same and defendant No. *1 is the seller of the said cabinet.*

5 That the cause of action arose on--when the plaintiff demanded the delivery of the cabinet and was refused.

6. That the value of the suit for purposes of

court-fees and jurisdiction is Rs. 300/- and requisite court-fees has been paid.

7. That the cabinet was purchased in Delhi and also the parties reside in Delhi ; hence this Court has jurisdiction to try this suit.

It is, therefore, prayed that a decree against defendant No. 2 be passed directing defendant No. 2 to return the cabinet to the plaintiff or in the alternative a decree for Rs 300/- with costs of this suit be passed in favour of the plaintiff against the defendant No 1 and other relief be also awarded to which the plaintiff is found entitled.

Sd/- Sant Lal Plaintiff

Through Counsel.

Verification :

Paras 1 to 4 are true to my knowledge and belief and Para 5 to 7 are believed to be true on information received. Verified at Delhi, this 20th day of March 1957.

Sd/- Sant Lal
Plaintiff.

No 24. *Suit for the recovery of price of goods lost in transit.*

In the Court of Judge, Small Causes, Delhi.

Amar Nath s/o.........caste............aged.........
resident of.........plaintiff.

Versus

Basant Lal s/o............caste............aged......
resident of .... Defendant.

D ra plainf in the suit for the recovery the price of good lost in transit [D, U. 1954.]

Suit for recovery of Rs. 500/-

The above-named plaintiff summits as under:—

1. That the plaintiff is a jeweller carrying on its business at Delhi and the defendant is a Goldsmith working at Calcutta.

2. That the plaintiff used to send jewellery to defendant for repairs. Similarly on 10-8-57 plaintiff sent jewellery worth Rs. 500/- to the defendant for repairs.

3. That the plaintiff failed to return this jewellery after duly repairing the same. A legal notice was also served upon the defendant, but he neither returned the jewellery nor paid the price (Rs. 500/-) of the same as damand in the notice

4. That the cause of action arose to the plaintiff on 10. 8 57 when the goods were sent to the defendant for repairs and defendant failed to return the same and again on 15. 12. 57 on service of legal notice and refusal of the defendant to pay the price or return the jewellery

5. That the value of the suit for purposes of court-fees and jurisdiction is Rs. 500/ and the required court fee has been paid.

6. That the goods were despatched from Delhi and were to be delivered at Delhi; hence this Court has jurisdiction.

It is, therefore, prayed that a decree for Rs. 500/- with costs be passed in favour of the plaintiff against the defendant and any other relief to which the plaintiff found entitled may also be awarded to the plaintiff.

Sd/- plaintiff.

Through

A. Counsel.

Verification:—

I, Amarnath the above named plaintiff solemnly affirm that the facts stated above in paras 1 to 3 are true to my knowledge and belief and paras 4 to 6 are believed to be true on information received. Verified at Delhi, this day...of December 1957.

Sd/- Plaintiff.

No. 25. *Suit for damages for breach of warranty.*
[Name of the Court and Title.]

The plaintiff above-described submits as under :

1. That the plaintiff is, and at all times material to the suit was, an owner of horse-driven hackney-carriage in Delhi, to the knowledge of the defendant.

Draft a plaint in a suit for damages for breach of warranty P. U.1953-56

2. That on......the defendant sold to the plaintiff for Rs. 450 a horse for the purpose of being used for driving hackney-carriage in Delhi and expressly warranted the horse sound for the said purpose The letter of warranty is filed.

3. That on being used in a carriage, the horse proved to be useless for the purpose aforesaid. On remaining in harness for about two hours, it turns vicious, begins to kick out, push the carriage back and refuses to obey the reins, thus threatening the sefety of the driver, passangers and the traffic. On...' a serious accident was caused due to the vicious habits of the horse when the carriage to which it was harnessed was pushed against the curb on Irwin Road, New Delhi, and upset, causing injuries to the driver and damage to the carriage. The plaintiff was put to an expense of Rs. 250/- on account of the accident.

4. That the plaintiff called upon the defendant by a registered notice dated...to pay Rs. 700- as damages on account of breach of warranty, but the defendant has refused.

5. The cause of action accrued to the plaintiff against the defendant at Delhi on...when the warranty was breached. As the cause of action arose in Delhi, where also the defendant resides, this Hon'ble Court has jurisdiction in the matter.

6. That the value of the suit for purposes of court-fees and jurisdiction is Rs. 700.

It is, therefore, prayed that a decree for

recovery of Rs 700 be passed in favour of the plaintiff against the defendant and costs allowed.

[Signature and verification.]

No. 26 Suit for the recovery of money being shortfall on and expenses of resale.

[Name of the Court and title of the Suit]

Suit for the recovery of Rs. 450, being shortfall on and expenses of resale.

Sheweth :

Draft a plaint on the suit for the recovery of money being short fall on and expense of resale [D. U. 1952

1 That on the 15th December, 1957, the plaintiff sold by auction one crate of crockery subject to the condition that all goods not paid for and removed by the purchaser within ten days after the sale should be resold by auction on his account. B purchased the said crate of crockery for Rs 1,000 at the auction having noted in writing all the conditions of the sale and paid Rs. 100 out of the price at the time of auction.

2. That the defendant failed to pay the balance of Rs. 900 remaining unpaid out of the price of the goods sold and to remove them within the time stipulated.

3. That on the 10th January, 1958, the plaintiff resold the said crate of crockery of the defendant by public auction for Rs. 500 after due notice in writing served on the defendant by registered post on 26th December, 1957. A copy of the notice and the acknowledgment of the receipt of notice are filed.

4. That the expenses of resale amounted to Rs. 50.

5. That the cause of action arose to the plaintiff at Delhi on 15. 17, 58 when the balance of the price was not paid and on 10. 1. 58, the date of the resale. As the sale and the resale took place in Delhi, where also the price was to be paid, this

Court has jurisdiction to try the suit.

6. That the value of the suit for purposes of court-fees and jurisdiction is Rs. 450.

The plaintiff claims Rs. 400 being the difference on the resale, and Rs. 50, being the expenses on resale, in all Rs. 450 together with the costs of the suit.

Sd. A, ...Plaintiff,

Through...Counsel

[Verification : Paras 1 to 4 to knowledge, and paras 5 and 6 to belief.]

No. 27. *Suit for specific performance.*

[Title of the Suit]

Claim for Specific Performance

The plaintiff submits as under:—

... uary, 1955, ... a house ... in the East by—, on the South by—and on the West by—for a sum of Rs. 10,000 and received from the plaintiff a sum of Rs. 1,000 by cheque No.—on the—Bank Ltd. The sale deed was to be executed within three months on stamp paper to be supplied by the plaintiff and the balance of the price was to be paid before the Sub-Registrar at the time of presentation of the deed for registration. The agreement is attached to the plaint.

Draft a plaint in a suit by one for specific performance of an agreement to sell immovable property in his favour. [D. U. 1952. P. U. 1955, 49, 52]

2. That the plaintiff on 10th May, 1955, purchased the necessary stamp paper and called upon the ...

... letter calling upon him to perform the contract specifically by the 15th May, 1955, informing him that the plaintiff will in the last resort wait for the defendant in the Court of the Sub-Registrar with the

balance of the purchase price payable, the necessary stamp paper cn that day and in fact the plaintiff did so wait but the defendant has not performed the agreement.

3. That the plaintiff has been and still is ready and willing to perform his part of the contract of which the defendant has had notice.

4. That cause of action arose to the plaintiff against the defendant at Delhi on 15. 2. 55, the date of the agreement and on 15. 5. 55, the date when its performance was finally refused. As the defendant resides in Delhi and the contract was made in and was to be performed in Delhi this Hon'ble Court has jurisdiction to try the suit.

5. That the value of the suit for purposes of court-fees and jurisdiction in Rs. 1,000.

The plaintiff therefore prays for a decree ordering the defendant specifically to perform the agreement for sale to the plaintiff of the house bounded as described in para 1 of the plaint and to do all acts necessary to put the plaintiff in full possession of the said property.

[Signatures and Verification]

No 28. *Suit for the price of goods supplied*

(Title)

The plaintiff states as follows—

1. That the firm, ...is registered under the Indian Partnership Act, 1932 and carries on bussiness as Grossery Merchants at Saddar Bazar, Delhi and that B is one of its partner.

2. That at Delhi between 1st of January and 30th of June 1956, 'C' purchased various articles from the plaintiff of the total value of

Rs 3,000 - out of which he paid to the plaintiff Rs. 2,000 on the 15th of November 1957, leaving a balance of Rs 1,000 - still due from him and a statement of accounts along with 50 vouchers is attached herewith as Exhibit 'A'

3. That inspite of several demands the balance of the amount due to the plaintiff has not been paid. The last demand was made by registered notice by post on .... (copy of the notices and postal receipts are attached herewith)

4. That the cause of action arose to the plaintiff in favour of the defendant in Delhi on the respective dates on which the purchases were made by 'C' hence this Hon'ble Court has jurisdiction to try the suit.

5. That the value of the suit for purposes of court-fees and jurisdiction is Rs 1,000.

That the plaintiff prays that a decree for Rs 1,000 be granted in favour of the plaintiff against the defendant with costs and also further interest against the defendant as the Court deems reasonable.

[Signature and Verification].

No. 29. **Interpleader suit.**

In the Court of the Senior Sub Judge, Delhi.

Ram Kumar, son of [add description and address.]

...Plaintiff.

Vs.

1. Kishan Lal [add description and address]

2. Rajeshwari Devi widow of Shiv Lal [address]. ...Defendants

Interpleader Suit

Ram Kumar, the above-named plaintiff, submits as under :—

1. That on 10-6-1956, the late Shri Shiv Lal,

On 10th June, 1950 Shiv Lal deposited a box of Jewellery with Ram Kumar. Shiv Lal died on 6th August, 1951. Kishan Lal claimed it as the adopted son of Shiv Lal. Rajeshwari Devi.

denying the *adoption*, claimed the same as the widow of Shiv Lal. Ram Kumar wants to file an interpleader suit. Please draft the plaint on behalf of Ram Kumar with proper verification. [D. U. 1953]

who died on 6-8-1957, deposited with the plaintiff a box of jewellery, locked and sealed with his seal, for safe keeping.

2. That the defendant No. 1 now claims the said box as the adopted son of Shiv Lal, while the defendant No. 2 claims the same as the widow of the depositor, denying the adoption of Kishan Lal defendant No. 1.

3. That the plaintiff is ignorant of the respective rights of the defendants. He has no claim on the jewellery box other than that for charges and costs, and is ready and willing to deliver it to such person as the Court shall direct.

4. That the suit is not brought by collusion with either of the two defendants.

5. That cause of action arose a week back on the conflicting demands of the defendants.

6. That the value of the suit for purposes of court-fees and jurisdiction is Rs. 500, the estimated value of the property and the suit being for a mere declaration the plaint is stamped with a court-fees of Rs. 15.

Draft a plaint in an interpleader suit. [P. U. 1949.]

It is therefore prayed the defendants be required to interplead together concerning their claims to the jewellery box, that they be restrained by injunction from taking any proceedings against the plaintiff regarding the said box, that pending the proceedings some person be authorised to receive the jewellery box from the plaintiff and the plaintiff be discharged from all liability to either of the defendants in relation to the said box on delivering it to such person.

[Signature and Verification]

No. 30. *Interpleader suit.*

IN THE COURT OF THE SENIOR SUB JUDGE, DELHI.

A. son of (add description and address)

...Plaintiff.

Versus

1. C (add description and address)
2. D (add description and address)

.... Defendants.

Interpleader Suit.

A, the above-named plaintiff, submits as under .—

1. That on 10. 4. 1956 the late B, who died on 15 8 1957 deposited with the plaintiff a sum of Rs. 5000/- for safe keeping.

2 That the defendant No. 1 now claims the said amount as the adopted son of B, while the defendant No 2 claims the same under a will executed by B.

3. That the plaintiff is ignorant of the respective rights of the defendants. He has no claim on the money other than that for charges and costs, and is ready and willing to deliver it to such person as the Court shall direct.

4. That the suit is not brought by collusion with either of the defendants.

5. That cause of action arose a week back on the conflicting demands of the defendants.

6. That the value of the suit for purposes of jurisdiction is Rs. 5,000/- and for court-fee (see plaint No. 29).

It 'is prayed that the defendants be required to interplead together concerning their claims to the [illegible] all [illegible] this

[Signature and verification]

A' holds in his hand Rs. 5 000 belonging to 'B'. B dies ; C and D claim the said amount adversely to each other. C claims it as the adopted son and heir of B, and D claims under a will executed by B. A claims no interest in the said amount and is ready and willing to deliver it to such person as may be found to be the rightful owner. A wishes to file an interpleader suit against D and C. Please draft a plaint for A. (D. U. 1955 57.)

No. 31. *Suit for malicious prosecution.*

[Title of the Suit]

Claim of Rs. 20,000 as damages for Malicious Prosecution

A filed a complaint against B, stating that B had cheated him to the extent of Rs. 50,000/- by making false representations A obtained a warrant of arrest for B and got him arrested Finally the complaint was dismissed by the Magistrate B desires to institute a suit for the recovery of a sum of Rs 20 000/-/- for malicious prosecution. Draft a plaint accordingly. [D. U. 1952]

The plaintiff submits as under :

1. That on the 14th day of January, 1957, the defendant obtained a warrant of arrest from the Court of Mr. X, a magistrate at Delhi on a complaint filed against A by the said B on a charge of cheating to the extent of Rs. 50,000 by making false represenation The plaintiff was arrested thereon and was imprisoned for three days and gave bail for ten thousand rupees to obtain *his release.*

2 That in so doing the defendant acted *maliciously and without reasonable or probable* cause.

3 That on the 20th day of February, 1957, the Magistrate dismissed the defendant's complaint and acquitted the plaintiff.

4. That many persons whose names are not known to the plaintiff, hearing of his arrest and supposing him to be a criminal have ceased to do business with him, so that as a consequence of the plaintiff's prosecution his monthly sales have fallen from Rs. 10,000 to Rs. 5 000 and profits have fallen from Rs. 1000 to Rs. 500 a month. The plaintiff's son X was engaged to be married P daughter of Q , who on hearing of charge against the plaintiff broke off the engagement on the 5th Feburary, 1957, thus causing a fall in the status of the plaintiff in his brotherhood. In consequence of the malicious prosecution, the plaintiff suffered pain of body and mind, and was preventedfrom transacting his business. In obtaining his release and in defending himself against the said complaint, the plaintiff had to spend Rs. 880 on lawyer's fees and Rs. 120 on witnesses.

Draft a plaint in a suit for damages for defamation [P. U. 1953].

5. That cause of action accrued to the plaintiff against the defendant on 14. 1. 57, the date when the *prosecution was started and on 20 2. 57 the* date when he was acquitted. As the plaintiff was

arrested and prosecuted in Delhi and the defendant resides in Delhi, this Hon'ble Court has jurisdiction in the matter.

6. That the value of the suit for the purposes of court-fees and jurisdiction is Rs. 20,000/.

The plaintiff claims Rs. 20,000 as damages and compensation as follows:

(a) For loss of business, Rs. 15,000

(b) For expenses incurred in defence Rs. 1,000 ; and

(c) For pain of mind and body suffered and loss of status and position in brotherhood Rs. 4, 000 ;

Sd/- A

Plaintiff.

Through B. Counsel

[Verfication :—Paras 1, 3 and 4 "to knowledge" and paras 2, 5 and 6 " to belief."]

No. 32. *Suit claiming damages for false imprisonment*

(Title)

(1) That the defendant is an A. I. O. in P. I. B. and lives in Karolbagh, New Delhi.

(2) That on 31-12-57 in the afternoon, the plaintiff was passing near the bungalow of the defendant. The defendant arrested and detained the plaintiff for 2 hours, and afterwards handed him in the custody of defendant No 2, who is an Inspector in the Police at Karolbagh Police Station on a false charge of kidnapping.

3. *The plaintiff offered to* execute a bond for his appearance before a magistrate as and when required, but the Inspector of the Police (Defendant

Draft a plaint in a suit for false imprisonment [P U. 1954]

No 2) refused to release the plaintiff, and kept him in wrongful confinement at the said Police Station for one day, and then produced him before the Magistrate X in Delhi The said Magistrate discharged the plaintiff from custody on the plaintiff executing a personal recognizance to appear when called upon.

The plaintfff claims Rs 20L0/- as damages for loss of reputation, discomfort and mental suffering

[Signature and Verification]

No 33. *Suit for injuries cau'ed to the plaintiff by negligent or rash driving.*

1. On.........19........., at about 5 P. M., the plaintiff was cycling along ....Road when a motor car bearing registered No ....driven rashly and negligently by the defendant's driver, collided with the plaintiff's bicycle at.........and caused the plaintiff severe personal injuries ;

PARTICULARS OF NEGLIGENCE

The said negligence consisted in driving the motor car at an excessive speed, and upon the wrong side of the road etc.

Particulars of injury

Draft a plaint in a suit for damages for *injuries from* negligent driving [P. U. 52 55]

As a result of the collision the plaintiff was knocked down, and sustained a blow on the left forehead with severe injury to the left frontal lobe of the brain, a bruise on the left hip and scratches upon the chest and was rendered unconscious for which he received medical treatment at first in hospital for ...days and then at home. The concussion and the unconsciousness which supervened brought on bronchial pneumonia in one of his lungs and as a a consetraumatic epilipsy, and fibroses of the lungs. He has been attended by a nurse as it is necessary that he should receive constant nursing and attention for the rest of his life.

2. At the time of the accident the plaintiff

was 38 years of age and was living a healthy, happy and vigorous life and was employed at...as a ...on a monthly salary of Rs... . As a result of the accident, the plaintiff is permanently and totally incapacitated for any form of work and his normal expectation of living for another...years has been reduced by at least half.

3 Since the accident the plaintiff's wife has been attending on the plaintiff as a nurse and on... 19, she resigned her job at ... a month, so that she might attend on the plaintiff as a nurse day and night.

4. The loss of wages of the plaintiff and of his wife are continuing and the plaintiff shall have to incur further expenses for medical and surgical treatment.

5. As a result of the accident the plaintiff has suffered damages.

Particulars of special damages.

Loss of wages of the plaintiff up to date at Rs. ...per month Rs.........

Loss of wages of plaintiff's wife upto date at Rs... per month Rs...

Medical and nursing expenses upto date Rs....

Cost of repairs of the bicycle Rs....

In addition to the said special damage the plaintiff is also entitled to the following damages:

(a) Rs... as compensation on the basis of the wages which he would have received in future in his life had extended to its normal period, alternatively, on the basis of the loss of expectation of life.

(b) Rs... *on the basis of the loss of wages in* future, of his wife.

(c) Rs... as probable additional medical and nursing expenses.

(d) Rs....... as compensation for physical injuries and physical and mental suffering.

The plaintiff claims:—

1. Rs.... by way of special damage, and

2. Rs.... as compensation payable for the other damages and losses.

[Verification]

No 34. *Claim for wrongful dismissal*

(Title)

1. The plaintiff is a retired member of the Indian Civil Service.

Draft a plaint in a suit for compensation for wrongful dismissal. [P. U. 1949].

2. By an agreement, dated.........19......made in writing between the defendant and the plaintiff at..., the defendant agreed to employ the plaintiff as the Manager of his firm at the monthly salary of Rs.........plus Rs ....as sumptuary allowance with free furnished quarters for a period of two years commencing from the 19....

3. That plaintiff served the defendant in the said capacity until......19...when the defendant, by letter of the date, terminated the contract of service and verbally refused to allow the plaintiff to continue in his service any longer.

4. The plaintiff made attempts which have been unsuccessful to obtain other employment.

5. In a consequence of the wrongful dismissal aforesaid the plaintiff has been prevented from earning his salary and deprived of the other benefits to which he was entitled during the remainder of the term, and has thereby suffered damages.

Particular of damages.

Salary for the balance of the period at

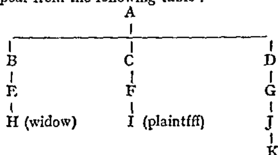
Rs. per month ....Rs .... Value of his deprivation of the sumptuary allowance and the free furnished quarters for the term Rs. .... The plaintiff claim –

Rs. – damages
[Verification]

No. 35. *Suit to set aside an adoption.*

(Title)

1. The plaintiff is related to A deceased, as will appear from the following table :—



Draft a plaint in a suit to set aside an adoption [D. U. 1956 P.U.1952,56]

2. That said E died on...and was possessed of considerable immovable property in 1946, and his widow Smt. H defendant entered in possession on his death ;

3. That all the male persons shown in the table except K., are dead and thus the plaintiff is the nearest reversionary heir of the said E ;

4. That the defendant No...Ram has wrongfully got his name entered in the records of the Government as owner of the property of the said E, and the other defendants are falsely giving out that Ram defendant has been validly adopted by Smt. H defendant No. 1 ;

5. That the said Ram, was never as a matter of fact adopted by the said Smt. H.

6. In the alternative, the *plaintiff says that* the said E never gave any authority to the said

Smt. H to adopt the said Ram or any other boy;

7. In the alternative, the plaintiff says that the said Ram was, at the time of the alleged adoption, an orphan and was not given in adoption by any one competent to give him in adoption.

The plaintiff claims :—

1. A declaration that the defendant Ram is not the adopted son of the said E.

2. In the alternative, a declaration that the adoption of the said Ram by Smt H is null and void. [Signature and Verification]

No. 36. *Suit to set aside an alienation made by a Hindu father.*

(Title)

1. The plaintiffs are the sons of defendant No. 3 and are, and have always been, members of a joint Hindu family with him. The said family is governed by the Mitakshara law of Benares School.

2 The property detailed at the foot of the plaint is joint family property of the plaintiffs and the defendant No. 2.

3. By a deed dated January 15, 1950, the said defendant No. 2. mortgaged the said property to defendant No. 1

4 The above mortgage was made without legal necessity, or, at any rate, there was no legal necessity to borrow money at such a high rate of interest.

(Or, the plaintiff does not admit the existence of the antecedent debts alleged in the mortgage-deed as being consideration of the mortgage)

(Or, the antecedent debts alleged to be the consideration of the mortgage, was incurred for the purpose of gambling at Dewali of 1950).

The plaintiff claims a declaration that the said mortgage is null and void.

[Signature and verification].

No. 37. *Suit for pre-empion Under Mohammadan Law.*

(Title)

1. One Iqbal sold the house described below to the defendant by a sale deed dated August 18, 1954, for an ostensible consideration of Rs. 10,000.

Description of the house.

2. The real consideration was only Rs. 8,000.

3. The plaintiff and Iqbal are both Shia Mohammadans.

4. The plaintiff owns a house to the North of and adjoining the said house, and is a Shafi-i-jar and the defendant has no right equal or superior, to that of the plaintiff.

Draft a plaint in a suit for preemption of the sale of a house in a town on the ground of vicinage. [P. U. 1949]

5. The plaintiff heard of the sale for the first time on October 1, 1954, and immediately declared his intention to assert his right of pre-emption.

6. That the same day on October 1, 1954, the plaintiff made a formal *talab-i-ishtishad* in the presence of the witnesses and in the presence of the defendant and the said Iqbal.

The plaintiff claims possession of the said house on payment of Rs. 10,000 or whatever sum the Court determines to have been actually paid as price of the said house.

[Signature and verification]

No. 38. *Suit for obstruction of plaintiffs right of way.*

(Title).

1. That the plaintiff is, and at all times herein after mentioned was the obsolute owner of house *No 26/40 Shakti nagar, Subzi Mandi, Delhi which* house is delineated in red colour in the plain annexed hereto.

2. That the plaintiff was, and is, entitled [illegible] a right of way from the plaintiff's said house throug[illegible] a door marked '*D*' the plain' hereto over a plot [illegible] land belonging to the defendant to a public hig[illegible] way and back again from the same for himself hi[illegible] dependants and servants at all times of the year.

3. That the plaintiff was, and is, entitled to the said right of way of enjoyment there of for over 20 years before the obstruction of the defendant hereinafter alleged, as of right and without interuption.

4. That the defendant, has on or about June 20, 1956, unlawfully obstructed the said way by constructing a boundary wall 8 ft. high across the whole length of the said land adjacent to the plaintiff's house, and has thus caused substantial damage to the plaintiff by affecting the evidence of the above easement of way.

5. That the action of the defendant has been a source of great discomfort to the plaintiff and has injured his health, and also of his defendants and servants.

[illegible] arose to the plaintiff [illegible] Delhi within [illegible]

7. That the defendant resides at Delhi, the accrual of the cause of action and the situation of the house being at Delhi, this Hon'ble Court has jurisdiction to try the suit.

8. That the value of the suit for purposes of court fees and jurisdiction has been fixed at Rs 400/-

The plaintiff claims:—

(i) Rs 400 as genarel damages ;

(ii) An order to the defendant to pull down and remove as much of the boundary wall as would reserve to the plaintiff the right of way which he has been enjoing ;

(iii) Perpetual injunction to restrain the defendant from the repitition or continuance of the act complained of;

(iv) Future damages at Rs. 20 a month upto the time the said obstruction is removed.

[Signature and verification].

Written Statements

Only a few model forms of written statements have been given of important cases The number of the plaint to which any written statement or defence relates has been given at the top of each written statement.

No. 1. *Written Statement to Plaint No. 1.*

IN THE COURT OF THE SENIOR SUB-JUDGE, DELHI.

A S/o B resident of 20/54 Shakti Nagar, Subzi Mandi, Delhi........... ......*Plaintiff.*

Versus

C S/o D resident of 2 Faiz Bazar, Delhi

Suit No ....of 1957 ......Defendant

Suit for the recovery of Rs. 1120/- being principal and interest due on a bond.

Written statement on behalf of the Defendant.

Respectfully sheweth :—

Preliminary objection.

That the bond forming the basis of ... t is unsta[illegible] ... No su[illegible] ... ice.

On merits.

1. That para 1 of the plaint is correct only to the extent that the defendant signed the bond

Sita Ram sued Hanuman Prasad to recover Rs 1100 on a pronote dated 7th February 1952. The defendant alleges [illegible]

is unstamped and that it was execu ed in considera-tion of Sita Ram securing pardon for him from the Court in which he was being prosecuted for murder Please draft the written statement on behalf of Hanuman Prasad [D. U. 1953]

but it is wrong that any lawful consideration passed from the plaintiff to the defendant for the bond. The defendant was then being prosecuted for murder in the Court of............, and the plaintiff induced him to execute the bond in consideration of the plaintiff securing pardon for him Morever, as submitted in the preliminary objection, the bond is unstamped and cannot be acted upon in any manner.

2. That paras 2 and 3 of the plaint are denied. No amount is due from the defendant to the plaintiff for principal or interest.

3. That re [illegible] ...nding pay-ment is not [illegible] suitable reply [illegible] of action has accrued to the plaintiff.

4. That jurisdiction of the Court is not denied.

5. That the value of the suit for the purposes of court-fee and jurisdiction is not disputed

It is therefore prayed that the suit be dismissed with costs.

Sd./- C. Defendant.

Through Shree K. N. Mehra (Advocate)

Verification.

I 'C' the above named defendant hereby verify that contents in paras 1 to 3 are true to my knowledge and paras 4 and 5 to be true according to information which I believe to be true.

Verified on this .....at Delhi.

Sd/C Defendant.

No. 2. Defence in a suit on account stated

(Plaint No. 6)

IN THE COURT OF THE SENIOR SUB-JUGE AMBALA

A B s/o CD, Oil Merchant Saddar Road, Ambala
...Plaintiff

Versus

E F s/o G. H, Sugur Merchant, Guru Bazar, Amritsar
... Defendant.

Suit for the recovery of Rs 1,500

Suit No...of 1957.

Written Statement on behalf of the Defendant.

The above named defendant states as follows :—

1. That paras 1 and 2 of the plaint are admitted.

2. That para 3 of the plaint is admitted to the extent that the defendant went to the plaintiffs shop on July 20, 1957 and stated an account in writing and signed a balance of Rs. 1,500 in the plaintiffs account book, but does not admit the allegation that the said defendant understood the accounts on each side. The said defendant accepted, without checking or understanding the account as given to him by the plaintiff.

3. The defendant asserts that in the account as shown in the plaintiffs account-books and as given by the plaintiff to the said defendant there were certain substantial errors of calculation; and the rates at which the plaintiff purchased sugur were false and known by the plaintiff to be false and the plaintiff got them entered in his account books fraudulently to cause injury to the defendant firm.

Particulars of the fraudulent entries.

(Give some particulars with dates and rates etc, together with errors and state the difference).

4. That para No. 4 of the plaint is denied. The defendant has paid Rs....... to the plaintiff on July 25, 1957.

5. That paras 6 and 7 are legal and formal and need no reply.

It is therefore prayed that the plaintiffs suit may be dismissed with costs.

Sd/- E F...Defendant

Through...Counsel.

Verification.

I the above named defendant verify that the contents of paras 1 to 4 of the above written statement are true with in my personal knowledge, and contents of para 5 of this written statement are believed to be correct from information received.

Verified......on.......at...

Sd ...EF...Defendant

No. 3 Written statement in a suit for Accounts.

(Plaint No. 8.)

IN THE COURT OF...

1. Ram Parkash S/o...resident of Caste...				Plaintiffs.
2. Chaman Lal	,,	,,	,,	
3. Karam Chand	,,	,,	,,	
4. Bhag Ram	,,	,,	,,	

Versus

Prem Kumar S/o...resident of...Caste...*Defendent.*
Suit No......of 195...

Suit for rendition of Accounts.

The above named defendant states as follows :

1. That para 1 of the plaint is admitted.

[illegible]

3. That para 3 of the plaint is admitted.

4. That para 4 of the plaint is denied. The defendant left the service of the club on...with the permission of......its president and handed over all the books and the funds which were in his custody and obtained a receipt from him which is submitted herewith as Exhibit 'A'.

5. That para 5 of the plaint is denied.

6. That para 6 of the plaint is admitted to the extent that the Court has jurisdiction to by this suit, the rest is denied.

7. That para 7 of the plaint needs no reply.

The defendant prays that the suit be dismissed with costs.

Sd/. Prem Kumar Defendant.

Through Shree A. Mahajan.

Advocate.

Verification.

I, Prem Kumar the above named defendant do hereby verify that the contents of paras 1 to 3 are tue to my knowledge and the remaining paras are correct to my belief.

Verified at Delhi this day of......1957.

Sd/- Prem Kumar

Defendant.

No. 4 *Written Statement in a suit for injunction to restrain nuisance.*

(Plaint No. 12)

(Title)

The above named defendant states as follows:—

1. Paras 1 and 2 of the plaint are admitted to be correct.

2. Para No. 3 of the plaint is admitted to this extent only that the defendant has erected a factory for manufacture of cycle parts. The fact is this that

Draft a written statement in suit for an injunction to restrain nuisance (P U 1953

this factory has been erected under the supervision of the Muncipility and its Sanitary Staff is on duty for all the time to see that no nuisance, is created. The said factory has been erected on the directions of the Punjab Govt. order dated......

3. Para No. 4 of the plaint is wrong and denied. Plaintiff left his house as he wanted to be near to his office and to a College where his sons and daughters are studying and thus save himself from the heavy expense of transport.

It is therefore prayed that the suit be dismissed with costs.

(Signature and Verification).

In the suit specified in plaint No 13 Abdul Majid pleaded in defence that there were other factories in the locality manufacturing similar fireworks and that he had taken sufficient and necessary precautions for preventing nuisance as the Municipal by laws required to be taken Please draft the written statement on behalf of Abdul Majid. [D. U. 1954].

No 5 *Written statement to Plaint No. 13.*

(Name of the Court and Title of the suit,

Written statement of Abdul Majid.

Respectfully sheweth :

1. That para 1 of the plaint is admitted.
2. That para 2 of the plaint is admitted.
3. That para 3 of the plaint is denied. The defendant erected factory after seeing that there were so many such factories in the locality and the defendant had taken sufficient and necessary precautions for preventing nuisance as the Municipal by-laws required to be taken. Moreover the factory has a 40 feet height chimney for discharge of smoke far above the house. The noise emitted is slight.
4. That paras 4 and 5 of the plaint are denied. The plaintiff has left the house only for the purposes of the suit in order to create facts in support thereof.
5. That para 6 of the plaint is denied, but the jurisdiction of the Court is not denied.

6. That para 7 of the plaint is legal.

It is, therefore prayed that the suit be dismissed with costs.

Sd/—Abdul Majid.

Defendant

Through Counsel.

[Verification]

No. 6 *Written Statement in Ejectment Suit*

(Plaint No 14)

(Title)

The above named defendant states as follows :—

Draft a written statement in a suit possession of a house [P. U. 1949, 51].

1. That para 1 of the plaint is admitted to the extent that the defendant is the tenant of the plaintiff in the premises mentioned in para 1 of the plaint. The defendant has not seen a copy of the plan referred to in the plaint and therefore shows his inability to accept the correctness of the plan. The rate of the rent is admitted. But it is submitted that the terms and conditions embodied in the rent note do not affect the rights of the defendant as a tenant granted to him by the statute.

2. That para 2 of the plaint is totally wrong and is emphatically denied. It is wrong that [illegible]

the other hand the plantiffs two sons who have been married are living seperately in the accomodation alloted to them by the Government Thus there is a decrease in the number of familly members.

3. The defendant admits service of notice alleged in para 2 of the plaint, but does not admit that the plaintiff duly determined the defendants tenancy thereby. The said notice was not according to law as it did not expire with the month of tenancy.

4. That para 3 of the plaint is wrong and denied. The defendant is not liable to ejectment on the grounds alleged in the plaint. No cause of action has accrued to the plaintiff against the defendant.

5. That the defendant does not deny the territorial jurisditcion of this Hon'ble Court.

6. That 5 of the plaint is legal and formal and needs no reply.

It is therefore prayed that the suit of the plaintiff be dismissed with costs.

[Signatures and Verification]

No. 7. *Written statement in a suit for redemption of property mortgaged.*

(Plaint No. 17)

[Title of the Suit]

Suit for Redemption of Property Mortgaged
Written Statement of defendant.

Draft a written statement in the suit to plaint No. 17. [P. U. 1952]

Preliminary objection.

That the suit is premature. According to the terms of the mortgage deed, the plaintiff has no right to redeem the property before expiry of a period of five years from the date of the deed, which period yet remains unexpired.

On Merits.

1. That para 1 of the plaint is correct only in so far that the defendant is the mortgagee and the plaintiff is the mortgagor. It is, however wrong that possession of the property has remained throughout with the mortgagee.

2. That the particulars stated in para 2 are correct, except the description of the boundaries of the property.

3. That it is wrong that the defendant took possession of the property on the date of the mortgage. The plaintiff, in breach of the express terms of the mortgage kept the defendant out of the mortgaged property for a period of two years by having a collusive suit filed by his brother-in-law on behalf of his minor son challenging the mortgage on the ground that it was void as being without necessity. The defendant had to spend Rs. 1,000 on defence of the suit, which was ultimately dismissed bv the Court of......Sub Judge. 1st Class, Delhi, on....... The defendant is entitled to deduct this sum of costs from the rent and profits subsequently realised from the property by the defendant, inasmuch as the costs were incapable of being recovered from the minor son of the plaintiff. The defendant was given possession of the properly only on......, and even after that date the defendant has not been able to realise the entire rents and profits.

4. That para No. 4 of the plaint is in part denied. No cause of action has accrued to the plaintiff. Jurisdiction of the Court is not denied.

5. That para 5 of the plaint is not denied.

It is therefore prayed that the suit be dismissed with costs.

Sd/-B

Defendant.

[Verification]

No. 8 *Written Statement in a suit for dissolution of partnership and accounts.*

(Plaint No. 20)

[Title of the Suit]

The defendants state as follows :—

1, Paras 1 and 2 of the plaint are admitted. The partnership was for a fixed period of 7 years from...... which has not yet expired,

2. Para No. 3 of the plaint is denied. No disputes or differences have arisen between the defendants *interse* but the plaintiff has not contributed his full share of capital of the partnership business, and has wrongly appropriated considerable amount of money from the partnership for his sole use and as all the defendants protested and demanded the refund of the money, he served the notices on them in anticipation of the action proposed to be taken by them against him.

3. The plaintiffs suit is pre-mature and is otherwise incompetent and is brought *mala-fide* for the purpose of causing injury to the firm and the defendants in anticipation of their action against him. The defendants are and have always been prepared to settle accounts with the plaintiff and to allow him to withdraw from the partnership on his paying back the partnership assets unlawfully appropriated by him.

4. The suit of the plaintiff is not maintainable and is injurious and *malafide* to the firm and the defendants.

5. Paras 6 and 7 of plaint are legal and need no reply.

It is therefore prayed that the suit be dismissed with costs.

[Signed and verified].

C wishes to contest the suit specified in plaint No. 22on the

No. 9. *Written Statement in a suit for declar tion*
(Plaint No 22)

[Name of the Court and title of the suit.]
Written statement on behalf of Defendant No 1
Defendant No. 1 submits as under :—

Preliminary objection

That the suit is barred by limitation.

1. That para 1 of the plaint is not admitted for want of knowledge.

On Merits

2. That in para 2 of the plaint it is admitted that the property in dispute was attached.
3. That para 3 of the plaint is admitted.
4. That para 4 of the plaint is admitted.
5. That para 5 of the plaint is emphatically, denied. The property in dispute belongs to the answering defendant and not to defendant No. 2 as alleged in the plaint. The said property was purchased for valuable consideration by the answering defendant, and the consideration was paid by a Bank draft.
6. That para 6 of the plaint is denied, the plaintiff has no cause of action against the answering defendant.
7. That para 7 of the plaint is legal.
8. That para 8 of the plaint is not denied

It is therefore prayed that the suit be dismissed with costs and compensatory costs under section 35 A of C. P. C. be awarded to the answering defendant.

[Signature and Verification]

ground that the suit is barred by limitation, that the sale in his favour is genuine as the purchase money was given by him to D by a bank draft, and that the suit is not maintenable C being an auction purchaser certified by Court. Please draft the written statement on behalf of C. [D. U. 1955]

No. 10. *Defence in a suit for the recovery of goods purchased or in the alternative for refund of purchase money.*

(Plaint No. 23.)

(Name of the Court and title of the suit)

Written statement of Defendant No. 1.

Respectfully sheweth :

1. That Para 1 of the plaint is denied. The plaintiff never purchased the cabinet from

In the suit specified in plaint No. 23, Pratap Chand pleaded in defence that Rs. 300/-

paid by Sant Lal was only by way of earnest money. He waited sufficiently long and thereafter treated the contract as cancelled and the earnest money forfeited. Chuni Lal pleaded that he was a purchaser in good faith without notice. Please draft the written statements on behalf of Pratap Chand and Churi Lal. [D. U. 1958].

the defendant and the payment of Rs. 300 was only an earnest money and defendant after waiting sufficiently for a long time sold the cabinet to defendant No. 2 whereas the plaintiff had agreed to complete the sale within 14 days.

2 That Para No. 2 of the plaint is denied. The plaintiff failed to complete the sale within 14 days as agreed and hence the plaintiff sold the cabinet to defendant No. 2

3. That Para 3 of the plaint is denied.

4 That Para 4 does not concern the answering defendant.

5. That Para 5 of the plaint is denied.

6. That Para 6 of the plaint in legal.

7. That Para 7 of the plaint is not denied.

It is therefore prayed that the suit be dismissed with costs.

Sd/- Pratap Chand.

Defendant No. 1

Through counsel.

Verification.

Paras 1 to 4 of the written statement are true and correct to my knowledge and the remaining paras are so to my belief, verified at Delhi, this .

Sd/- Sant Lal

Defendant No 1.

(Name of the Court and title of the suit)

Written statement of defendant No 2.

Respectfully sheweth :—

of knowledge, the answering defendant is a purchaser in good faith for valuable consideration and without notice of any previous sale.

3. That Para 3 of the plaint is denied.

4. That Para 4 of the plaint is denied.

5. That Para 5 of the plaint is denied.

6. That Para 6 of the plaint is legal.

7. That Para 7 of the plaint is not denied.

It is therefore prayed that the suit be dismissed with costs and special costs under Section 35 A of the C. P. C. be also awarded to the defendant

Sd/- Defendant No 2

Through Counsel

[Verification]

No. 11. *Written statement in suit for the recovery of price of goods lost inatransit*

In the suit specified on page 127. Basant Lal pleaded in defence that he was not guilty of negligence as he had taken such care as a man of ordinary prudence would under similar circumstances have taken. So the failure to insure did not create any liability. Please draft the written statment on behalf of Basant Lal. [D. U.1954].

(Plaint No. 24.)

[Name of the Court and title of the suit]

Written Statement of the defendant.

The defendant submits as under :—

Preliminary objection.

That the defendant resides at Calcutta and lawfully carries on his business at Calcutta and Delhi Courts have no jurisdiction to try this suit,

On merits.

1. That para 1 of the plaint is not denied.

2. That para 2 of the plaint is not denied.

3. That para 3 of the plaint is denied. The defendant duly despatched the goods to plaintiff by an un-insured parcel post on.........as was the practice between the parties and if the goods are lost or otherwise misplaced the defendant is not responsible

for the same. There has been no negligence or want of precaution on the part of the defendant. On previous occasions also the goods were never despatched by insured parcel post; as such failure does not create any liability.

4 That para 4 of the plaint is denied, no cause of action ever arose to the plaintiff against defendant as the goods were duly despatched.

5 That para 5 of the plaint is denied, Delhi Courts have no jurisdiction to try this suit as the defendant carries on its business at Calcutta and resides at Calcutta.

It is therefore prayed that the suit be dismissed with costs and also compensatory costs under section 35—A of the C. P. C be awarded to the defendant.

Defendant

Through . Counsel.

Verification.

I, the above-named defendant, solemnly affirm that the facts stated above in paras 1 to 3 are true to my knowledge and belief and paras 4 to 6 are believed to be true on information received. Sd/ defendant

No 12 *Written statement in a suit for specific performance*

Draft a written statement suit for specfic performauce [D. U. 1952].

(Plaint No. 27)

[Name of the Court and Title of the suit]

Claim for specific performance of contract.

Written Statement of the defendant.

The defendant submits as follows:

1. That para 1 of the plaint is not admitted to be correct. The defendant did agree to sell House No........to the plaintiff for Rs. 10,000 and did receive Rs. 1,000 by way of earnest money but important terms of agreement to sell were:

(a) that possession—and not vacant possession—will be delivered on registration of the deed;

(b) that the plaintiff will purchase the nacessary stamp paper within a month of the date of the agreement to sell and deliver it to the defendant for execution of a deed of sale along with a draft deed;

(c) that the deed of sale will be got registered and price paid within 45 days of the agreement to sell and

(d) that in the event of the plaintiff's default, the earnest money will stand forefeited.

2. That para 2 of the plaint is wrong. The plaintiff has not performed the essential terms of the contract within the time agreed nor was he or is ready and willing to do so. After the agreement, the plaintiff told the defendant that he would go on with the transaction only if vacant possession of the property were delivered to him although at the date of the agreement he knew that the major part of the property was in possession of tenants and possession spoken of in the agreement to sell was possession by attornment of the portion let and vacant possession of the rest The plaintiff himself failed to furnish the necessary stamp paper of the draft deed of sale by the agreed time, although reminded by the defendant by a letter, copy of which is filed. On the non-payment within the agreed period of 45 days the defendant has forfeited the earnest money paid and informed the plaintiff that the agreement to sell stands terminated.

3 That para 4 is wrong. No cause of action has arisen to the plaintiff as alleged. The jurisdiction of the Court is not denied.

4. That para 5 of the plaint is formal and needs no reply.

It is therefore prayed that the suit be dismissed with costs and as the plaintiff has himself been at fault throughout and the present suit is frivolous and vexatious, the defendant be allowed compensatory costs as well under S. 35-A, C. P. C.

Sd –
Defendant

Through.........Counsel

[Verification :—Paras 1 and 2 "to knowledge" 'rest to belief'].

No. 13 *Defence in an interpleader suit:*

(Plaint No 30)

In the suit specified in plaint no. 30, D wishes to challenge the adoption on the ground that C was an orphan and requisite ceremonies did not take place. Besides he also wishes to allege that A had entered to an agreement with C before the suit that if C succeeded in the suit he would accept from A Rs. 4,000/ only in full satisfaction of his claim. Please draft the written statement on behalf of A. [D.U. 1955]

Ans (Name of the Court and title of the suit)

Written statement of defendant No. 2.

D the above-named defendant submits as under:—

1. That para No. 1 of the plaint is admitted.

2. That para No 2. of the plaint is not denied except that the defendant No 1 is not an adopted son of B. Defendant No. 1 was n orphan and B brought him out of pity and charity, whereas B executed a will in favour of the answering defendnat and without prejudice to the plea C has agreed to relinquish all his right whatever he mights have in favour of the ansaering defendant for a consideration of Rs 4000/-

3. That para No 3 of the plaint is not denied.

4. That para 4 and 5 of the plaint are not denied.

5. That para 6 of the plaint is legal.

6. That para 7 of the plaint is legal.

Additional pleas.

7. That the defendant No. 1 is not the adopted son of B. Defendant No, 1 was only an orphan and was brought by B out of sheer charity and pity, and

the requisite ceremonies of adoption were not performed.

8. That without prejudice to the above plea defendant No. 1 has agreed with the answering defendant piror to the institution of this suit to relinquish all his rights and interests in favour of the answering defendant for a consideration of Rs 4,000/- ou y.

It is, therefore, prayed that the decree for the amount be passed against the defendant No. 1 in favour of the answering defendant.

[Signature and verification]

Paras 1 to 4, 7and 8 are true to my knowledge.
Paras 5 and 6 on information received.

Sd/-

Defendant No. 2.

No. 14 Written Statement in a suit for wrong ful dismissal.

(Plaint No 34.)

(Title)

1. Para No 1 of the plaint is admitted.

2. Para No. 2 of the plaint is admitted to this extent only, that the plaintiff had entered upon the service of the defedant on.........He had agreed to take the plaintiff in his service relying up on the representations of the plaintiff that he was an honest and efficient assistant. The plaintiff proved himself to be thoroughly inefficient and untrustworthy, and the defendant was compelled to dismiss him from service.

Draft a written statment in suit for wrongfull dismissed (P. U. 1953]

3. Para No. 3 of the plaint about the dismissal [illegible] that the said

(1) The plaintiff has misapropriated several petty items, and failed to credit the same in

It is therefore prayed that the suit be dismissed with costs and as the plaintiff has himself been at fault throughout and the present suit is frivolous and vexatious, the defendant be allowed compensatory costs as well under S. 35-A, C. P. C.

Sd –
Defendant

Through.........Counsel

[Verification :—Paras 1 and 2 "to knowledge" 'rest to belief'].

No 13 *Defence in an interpleader suit:*

(Plaint No 30)

In the suit specified in plaint no. 30, D wishes to challenge the adoption on the ground that C was an orphan and requisite ceremonies did not take place. Besides he also wishes to allege that A had entered to an agreement with C before the suit that if C succeeded in the suit he would accept from A Rs. 4,000/ only in full satisfaction of his claim. Please draft the written statement on behalf of A. [D.U. 1955]

Ans. (*Name of the Court and title of the suit*).

Written statement of defendant No. 2.

D the above-named defendant submits as under:—

1. That para No. 1 of the plaint is admitted.

2. That para No 2. of the plaint is not denied except that the defendant No 1 is not an adopted son of B. Defendant No 1 was n orphan and B brought him out of pity and charity, whereas B executed a will in favour of the answering defendnat and without prejudice to the plea C has agreed to relinquish all his right whatever he mights have in favour of the answering defendant for a consideration of Rs 4000/-

3. That para No 3 of the plaint is not denied.

4. That para 4 and 5 of the plaint are not denied.

5. That para 6 of the plaint is legal.

6. That para 7 of the plaint is legal.

Additional pleas.

7. That the defendant No. 1 is not the adopted son of B. Defendant No, 1 was only an orphan and was brought by B out of sheer charity and pity, and

the requisite ceremonies of adoption were not performed.

8. That without prejudice to the above plea defendant No. 1 has agreed with the answering defendant piror to the institution of this suit to relinquish all his rights and interests in favour of the answering defendant for a consideration of Rs 4,000/- on y.

It is, therefore, prayed that the decree for the amount be passed against the defendant No. 1 in favour of the answering defendant.

[Signature and verification]

Paras 1 to 4, 7and 8 are true to my knowledge.
Paras 5 and 6 on information received.

Sd/-

Defendant No. 2.

No. 14 Written Statement in a suit for wrong ful dismissal.

(Plaint No 34.)

(Title)

1. Para No 1 of the plaint is admitted.

2. Para No. 2 of the plaint is admitted to this extent only, that the plaintiff had entered upon the service of the defedant on.........He had agreed to take the plaintiff in his service relying up on the representations of the plaintiff that he was an honest and efficient assistant. The plaintiff proved himself to be thoroughly inefficient and untrustworthy, and the defendant was compelled to dismiss him from service.

Draft a written statment in suit for wrongfull dismissed [P. U. 1953]

3. Para No. 3 of the plaint about the dismissal of the plaintiff is admitted, but denies that the said dismissal was wrongful.

Additional Pleas :—

(1) The plaintiff has misapropriated several petty items, and failed to credit the same in

registers.

(2) The plaintiff was guilty of gross misconduct on several occasions.

(3) The plaintiff was negligent in the performance of his duties.

It is prayed that plaintiff's suit be dismissed with costs.

No 15 *Defence in a suit to set aside an alienation made by Hindu father.*

(Plaint No. 36.)

(1) The defendant admits the allegation in paras 1 and 3 of the plaint.

(2) The defendant denies that the property was the joint family property in which the plaintiffs had any interest. It was the self acquired property of the defendant No 2

(3) The defendant denies that the mortgage was made without legal necessity or that there was no necessity for the rate of interest stipulated.

(4) The mortgage was made to meet the marriage expenses of Smt. Tara daughter of defendant No 1.

(Or the defendant denies that the antecedent debt was incurred for the purpose of gambling).

(Or the defendant No. 1 owed a debt to one Raj Kumar under a bond dated July 1, 1922 and the mortgage was to pay off the debt).

(5) The rate of interest stipulated in the mortgage deed is what was generally prevalent at that time in the market (or, was at the time and under the circumstances fair and reasonable)

(6) The plaintiff was not born when the said mortgage was made, and the only other members of the family of defendant No. 2. at the time were the plaintiff's uncle and elder brother and the mortgage was made with their consent.

No 16. *Defence in a suit for pre-emption Under Mohammadan Law.*

(Plaint No. 37.)

1. The defendant admis to have purchased the said house from Iqbal but denies that the real consideration was Rs. 10,000.

2. The defendant admits that the plaintiff is a shafi-i-jar but denies that the defendant has no preferntial right. The defendant owns a house to the North of the house in suit and the defendant has a right to pass daily used water from his house through the house in dispute. Therefore the defendant claims to be a *Shafi-i-Khalil.*

3. The defendant does not admit that immediately on hearing of the sale the plaintiff declared his intention to assert a right of pre-emption.

4. The defendant denies that the plaintiff made the *talab-i-ishtishad* in the presense of the defendant or at all.

——

MISCELLANEOUS APPLICATIONS

Applications under the C. P. C.

No. 1.—Objection about compensatory costs under S. 35 A, C. P. C. (*a*)

(Name of the Court and title of the suit). *Application under S. 35A/ C. P. C.* (*a*) about *compensatory costs.*

(By defendant).

To the written statement, add, as the last paragraph.

"The plaintiff's claim is false (or vexatious), to the knowledge of the plaintiff and the defendant therefore claims special costs by way of compensation."

(By plaintiff).

"The plaintiff begs to submit that the defence of payment put forward by the defendant is false and vexatious to the knowledge of the said defendant and therefore claims special costs by way of compensation."

No. 2. Application for amendment of Plaint Judgment, and decree (Sec. 152).

[Title of the Suit]

Application under S. 152, C. P. C. for amendment of the plaint, judgment and decree.

The decree-holder submits as under:—

Darft an application for amendment of a plaint, udgment and decree.

1. That a decree was passed in the cause noted above by this Hon'ble Court on 20. 1. 56 for sale of the property mortgaged by the judgment-debtor with the decree-holder.

2. That the survey Nos. of the plots as given in the decree and the judgment are Nos. 250 and 251, but as a result of alteration of survey Nos in a recent settlement, these Nos. no longer refer to the property in suit. The property to which the decree, the judgment and the plaint relate has now come to bear Nos. 400 and 401.

3. That the mistake in the plaint, the judgment and the decree has crept in, due to the fact that the plaintiff had given in the plaint the survey Nos. and the bounderies of the mortgaged property as described in the mortgage deed He had no knowledge of the alteration of the survey Nos. The defendant also put in his defence with relation to the property described in the mortgage deed. The description of the property by bounds does not, therefore, tally with its description by survey numbers.

4. That it is just and proper that the decree, the judgment, and the plaint be amended so as to substitute Nos. 400 and 401 for Nos. 250 and 251.

It is, therefore, prayed that the decree, the judgment and the plaint be amended and the new survey Nos. of the plots, 400 and 401 be substituted for the old survey Nos 250 and 251.

Sd/- A,
Decree-holder.

[Verification.]

No. 3 *Application for Amendment of pleading.*

[Name of the Court and Title of the Suit].

Application of the defendant under Order VI. r. *17, C. P. C for amendment of written statement*

Draft an application amendment of a written-statement [D. U. 1949.]

Respectfully sheweth :—

1. That the cause above noted is pending in this Hon'ble Court and the next date fixed for hearing therein is 25, 7, 57 for evidence.

2. That during his examination before issues, the plaintiff stated facts not given in the plaint which point to an allegation of fraud having been practised against him in the matter of execution of the contract in suit. In the plaint, fraud was pleaded in relation to performance only. It has therefore become necessary to controvert these facts.

It is therefore prayed that the defendant be allowed to amend Para 3 of his written statemant so as to controvert the plea of fraud relating to the execution of the contract.

Sd/- B,
Defendant.

[*Verification :* Both Paras "to knowledge".]

No. 4. Application for setting aside an exparte decree under O. 9. r, 13 C. P. C.

(Name of the Court and Title of the suit.)

Application under order IX. r, 13 C. P. C. for setting aside ex-parte decree.

4. That......(Repeat paras 4 and 5 of the application).

Sd/- Y,

Delhi ... The March, 1958

Deponant.

Draft an application for setting aside an ex part decree [D U. 1949, 1955]

Verification.

I, Y, named above take oath and say (or, state on solemn affirmation) that the above affidavit is true and correct and that no part of it is false, nor has anything been kept concealed from this Honourable Court.

Sd/- Y,

Delhi......The March, 1958, Deponant.

No. 5. Application for an amendment of Issues

[Name of the Court & the Title of the suit]

Application of the Plaintiff for amendment of Issues under Order XIV, r. 5, C. P. C.

Sheweth :—

1. That issues were framed by this Hon'ble Court on the last date of hearing, the 12th November, 1956.

Draft an application for amendment of issues [D. U. 1949].

2. That issues No. 1 as framed unjustifiably cass the burden of proof on the plaintiff. In face of the admission in Para 3 of the written statement of a relationship of agency by the defendant, the issue should have been : "Whether a suit for accounts is not maintainble."

3. That is para 5 of the plaint, an alternative plea of defendant's liability to the plaintiff for "money had and received" has been raised specifically, which the defendant has denied. No issue has, however, been framed on the point.

It is therefore respectfully prayed that issue No. 2 be amended as stated in Para 2 above and an additional issue on the alternative plea be framed.

Sd/-A

Verification Plaintiff.

The defendant sabmits as under :—

1. That in the suit noted above, a decree was passed ex-parte against the defendant for Rs. 5,000/- on. ....on default of the defendant to appear.

Draft an application for amendment of issues [D U 1949]

2 That the case was fixed for hearing of the evidence of the parties on the aforesaid date.

3. That the defendant was never served personally with the summons, the service was effected by affixing on the door of the defendant while he was in prison.

4 That the defendant could not appear on the date of the hearing as he was in prison on that date.

5 That the absence of the defendant was not voluntary.

6 That the defendant came to know on...... when he was released from the prison.

It is therefore prayed that the ex-parte decree be set aside and the case decided on merits.

Dated Sd/- Y,

Defendant.

(Application is to be supported by affidavit. Hence no verification is given.)

Affidavit.

(Name of the Court and Title of the suit)

Affidavit of Y son of Z, caste Hindu, aged about 40, by calling a Merchant of 10, Nai Sarak, Delhi.

Y, above-named takes oath and says as under (or "states on solemn affirmation.") :—

1. That (Repeat para 1 of the application, substituting "I" for "the defendant" and making corresponding changes in verbs.)

2. That......(Repeat para 2 of the application).

3. That......(Repeat para 3 of the application).

4. That......(Repeat paras 4 and 5 of the application).

Sd/- Y,

Delhi ... The March, 1958

Deponant.

Draft an application for setting aside an ex part deerce [D.U. 1949, 1955]

Verification.

I, Y, named above take oath and say (or, state on solemn affirmation) that the above affidavit is true and correct and that no part of it is false, nor has anything been kept concealed from this Honourable Court.

Sd/- Y,

Delhi......The March, 1958, Deponant.

No. 5. Application for an amendment of issues

[Name of the Court & the Title of the suit]

Application of the Plaintiff for amendment of Issues under Order XIV, r. 5, C. P. C.

Sheweth :—

1. That issues were framed by this Hon'ble Court on the last date of hearing, the 12th November, 1956.

Draft an application for amendment of issues [D. U. 1949].

2. That issues No. 1 as framed unjustifiably cass the burden of proof on the plaintiff. In face of the admission in Para 3 of the written statement of a relationship of agency by the defendant, the issue should have been : "Whether a suit for accounts is not maintainble."

3. That is para 5 of the plaint, an alternative plea of defendant's liability to the plaintiff for "money had and received" has been raised specifically, which the defendant has denied. No issue has, however, been framed on the point.

It is therefore respectfully prayed that issue No. 2 be amended as stated in Para 2 above and an additional issue on the alternative plea be framed.

Sd/-A

Verification Plaintiff.

Para 1 of the application is true to my know ledge and Paras 2 and 3 are so to my belief. Verifie at Delhi, this 8th day of March 1958.

Sd/-A

Plaintiff.

No 6 *Application to sue as a pauper*

(Title).

Draw up the plaint in the usual form. and ad the following before prayer for relief as a seperat paragraph

"The plaintiff is not possessed of means suffi cient to enable him to pay the court-fee prescribe by law for this suit, and therefore prays for permis sion to sue as pauper. The immovable and movabl property owned and possessed by applicant i specified in schedules A and B respectively at the fo of the plaint."

Draft an application for execution of decree under o. 21 r 11 c p c [D. U. 1951.]

No. 7. *Application for execution of decree unde O. 21 r. 11 & 35 C. P. C.*

(*a*) In the court of......Sub Judge, 1st Class Delhi A, son of X, caste Arora, resident of 4,...Lane Delhi

.. ...Decree-holde

Versus

E, son of Y, caste Khatri, of No.13...Road, New Delhi

......Judgment-debtoi

Application for examination of decree

under O 21. r. 11 & 35, C. P. C.

The decree-holder begs to apply for execution of the decree, particulars whereof are noted below :—

(*a*) The number of the suit.	Suit No. 57 of 1957
(*b*) The date of the decree.	25. 10. 1957

bringing the legal representatives of the deceased defendant on record.

The plaintiff begs to state as under :—

1. That the defendant above described died at Delhi on 20. 1. 57, Leaving behind him two sons named A and B and a widow, Smt. Y, who are the legal heirs of the deceased defendant, who was not governed by the Indian Succession Act. All his heirs are therefore his proper legal representatives.

2. That their addresses are as under :—

3. That the right to sue survives against the legal representatives of the deceased defendant.

4. That this [illegible] made within 90 d[illegible] the defendant and i[illegible] Article 177, Indian Limitation Act.

It is therefore prayed that the two sons and the widow of the late defendant be brought on the record as his legal representative.

Sd/-
Plaintiff.

[*Verification* Paras 1 and 2 'to knowledge' and 3 and 4 'to belief'.]

No. 9. *Application for examination of a witness on open Commission.*

[Name of the Court and title of the suit]

Application under Order 26, r. 1 & 2 C. P. C. for examination of a witness on open Commission.

The plaintiff (or the defendant) submits as under :—

1. That in the above suit, *25. 3. 58* has been fixed as the next date of hearing when the evidence is to be recorded.

has been passed against the judgment-debtor by this Hon'ble Court. It is prayed that possession of the Bungalow No. 13,—Road, New Delhi, a certified copy of the plan whereof is attached to this application, be got delivered to the decree-holder, as also a sum of Rs. 10,800/- decreed as mesne profits against the defendant be realised by attachment and sale of the movable and immovable property of the judgment-debtor, as described in Schedules A and B attached hereto, the immovable property being better delineated in the plans C and D attached to this application. The decree-holder is taking steps separately for determination of future mesne profits.

Sd/A

Dated : 20. 11. 1957. Decree-holder.

Verification

The contents of the above application are true and correct to the best of any knowledge. Verified at Delhi, this 20th day of November, 1957.

Sd/A

Decree-holder.

An [illegible] sne profits is no part [illegible] is a part of proceed- [illegible] for final decree has [illegible] 12, C. P. C. after the defendant has delivered or the plaintiff has obtained possession of the property or for three years from the date of the decree, whichever is earlier, and the Commissioner has determined the amount of the mesne profits. Only on the final decree being passed will an application for realisation of the amount in execution lie.

No. 8 *Application for substitution of the heirs of a deceased plaintiff (O. 22. R 3) (5)*

[Name of Court and the title of the suit]

Application Under O. 22, r. 3. C. P. C. for

bringing the legal representatives of the deceased defendant on record.

The plaintiff begs to state as under :—

1. That the defendant above described died at Delhi on 20. 1. 57, Leaving behind him two sons named A and B and a widow, Smt. Y, who are the legal heirs of the deceased defendant, who was not governed by the Indian Succession Act. All his heirs are therefore his proper legal representatives.

2. That their addresses are as under :—

3. That the right to sue survives against the legal representatives of the deceased defendant.

4. That this application is being made within 90 days of the date of the death of the defendant and is therefore within time in view of Article 177, Indian Limiation Act.

It is therefore prayed that the two sons and the widow of the late defendant be brought on the record as his legal representative.

Sd/-
Plaintiff.

[*Verfication* Paras 1 and 2 'to knowedlge' and 3 and 4 'to belief'.]

No. 9. *Application for examination of a witness on open Commission.*

[Name of the Court and title of the suit]

Application under Order 26, r. 1 & 2 C. P. C. for examination of a witness on open Commission.

The plaintiff (or the defendant) submits as under :—

1. That in the above suit, 25. 3. 58 has been fixed as the next date of hearing when the evidence is to be recorded.

Verification

I A, solemnly affirm that the contents of the above affidavit are true to my knowledge and that no part thereof is false, nor has anything been kept concealed from this Hon'ble Court.

Draft an applica- for examin- tion of a pardanashin woman on commission [D. U. 1951.]

Sd/ A

Dated : 20. 2. 52. Deponent

No. 10. *Application for arrest before Judgment under O. 38 r. 1.* C. P. C.

(*a*) [Name of the Court and Title of the Suit].

Application of the Plaintiff under O. 38, r, 1, C. P. C. for arrest before judgment.

The Plaintiff-applicant states as under :—

1. That the plaintiff has filed a suit against the defendant for recovery of Rs. 5,000 and the next date for hearing fixed therein is 23-3-57 for evidence of the defendant.

Draft— an applica- tion for arrest before judgment of a defendant: [D.U. 1949.]

2. That the defendant with intent to defeat the plaintiff and to make it impossible for him to realise the amount that may be decreed against the defendant, has removed his place of business from Delhi to Jaipur and has sent to that place all his goods, stock-in-trade and household effects and has also begun to reside there permanently.

3. That the defendant does not own in Delhi any other property movable, or immovable which may be available for attachment in execution of the decree that may be passed against him in this suit.

It is therefore prayed that a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance be issued.

Delhi : Sd/- A,

Dated 10. 2. 1957. Plaintiff.

2. That among the witnesses of the applicant cited in the list of witnesses, is Smt. Y who is a *purdanishan* lady and is exempted from personal appearance in Courts under the provisions of the C. P. C. She resides in Tihar, Delhi, within the jurisdiction of the Hon'ble Court.

Draft the following: An application for bringing the legal representatives of a deceased defendant on record such legal representative consisting of deceas's wife and two sons. D. U. 1951.

3. That the examination of Y is essential for proof of facts in support of the applicant. This is a case where it would be fit and proper for a commission to issue for examination of Y at her residence.

It is therefore prayed that an open commission be issued for the examination of Y.

Dated : Delhi, the 20th February, 1958.

Plaintiff (or Defendant)

AFFIDAVIT

[Name of the Court and Title of the Suit as above]

Affidavit of A, son of X, a Hindu, aged about 47 years, by profession a trader, resident of Bazar Ballimaran, Delhi.

I, A. described above, solemnly affirm as under :—

1. That the suit above noted is pending in the Court above described and that the next date for hearing fixed therein is 25. 3. 58 for recording of evidence of the parties.

2 That among my witnesses is Smt. Y, who is *purdanishan* lady, and is exempt from appearing personally in Courts .

3. That the evidence of Y is necessary for my case and that it is just and proper that she be examined on commission.

Delhi : S/d A

Dated 20. 2. 58 Deponent.

Verification

I A, solemnly affirm that the contents of the above affidavit are true to my knowledge and that no part thereof is false, nor has anything been kept concealed from this Hon'ble Court.

Draft an applica- for examin- tion of a pardanashin woman on commission [D. U. 1951.]

Sd/ A

Dated : 20. 2. 52. Deponent

No. 10. *Application for arrest before Judgment under O. 38 r. 1.* C. P. C

(*a*) [Name of the Court and Title of the Suit].

Application of the Plaintiff under O. 38, r, 1, C. P. C. for arrest before judgment.

The Plaintiff-applicant states as under —

1. That the plaintiff has filed a suit against the defendant for recovery of Rs. 5,000 and the next date for hearing fixed therein is 23 -3-57 for evidence of the defendant.

Draft.— an application for arrest before judgment of a defendant· [D.U· 1949.]

2. That the defendant with intent to defeat the plaintiff and to make it impossible for him to realise the amount that may be decreed against the defendant, has removed his place of business from Delhi to Jaipur and has sent to that place all his goods, stock-in-trade and household effects and has also begun to reside there permanently.

3. That the defendant does not own in Delhi any other property movable, or immovable which may be available for attachment in execution of the decree that may be passed against him in this suit.

It is therefore prayed that a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance be issued.

Delhi : Sd/- A,

Dated 10. 2. 1957. Plaintiff.

AFFIDAVIT

[Name of the Court and Title of the Suit].

Affidavit of A son of X, caste Hindu, aged aboat 45, by calling a trader, of 99, Nai Sarak Delhi.

I, A, above described make oath and say as under (or "State on solemn affirmation") :—

1. That ... (Repeat Para 1. of the Application, substituting "I" for "the plaintiff' and making corresponding changes in verbs)

2. That...(Repeat Para 2 of the Application)

3. That...(Repeat Para 3 of the Application)

Draft an application for attachment before judgment of defendant's properties and supporting affidavit for the two application. [D. U. 1949.]

Sd/- A,

Delhi : The 10th February, 1957. Deponent.

Verification.

I, A, described above make oath and say (or, *state on solemn affirmation*) that the above affidavit is true and correct and that no part of it is false, nor has anything been kept concealed from this Hon'ble Court.

Sd/- A,

Delhi : The 10th February, 1957. Deponent.

No. 11 *Application for attachment before Judgment.*

[Name of the Court and Title of the Suit].

Application of the plaintiff under O. 38, rule 5. C. P. C. for attachment before Judgment.

Respectfully sheweth :—

1. That the plaintiff has this day filed a suit against the defendant for recovery of Rs. 5,000 on the basis of a *promissory* note attached with the plaint and no date has been fixed in it so far.

2. That the defendant has expressed his intention to dispose of all his attachable property of

the nature of stock-intrade to a relative of his (or to X). He has also removed valuable property such as his radio set, refrigerator, sewing machine, ceiling fans, wardrobes, from his own house to the residence of Y at 26,—Road, New Delhi.

3. That the object of the defendant is to defeat the just claim of the plaintiff and make realisation of the amount of any decree that may be passed against him impossible. On receipt of the notice of this suit, the defendant will dispose of his property to Z with whom he has already made arrangement for the purpose.

4. That if the defendant succeeds in disposing of his property as aforesaid, the claim of the plaintiff is likely to be defeated, and in any event is bound to be delayed.

It is therefore prayed that an order of attachment before judgment of the property of the defendant, detailed in the list attached to this application, be issued.

Delhi :

Dated 10—2—58.

Sd/ A.
Plaintiff.

List of property to be attached

1. All stock-in-trade, furniture, almirahs, fittings, ceiling fans, electric bulbs in the shop of the defendant at No. —, Esplanade Road, Delhi, value approximately.........Rs. 3,000.

2. A General Electric Refrigerator ; an H.M.V. Radio Set, three ward-robes, motor cycle, B. S. A., 2. 5 H. P. No. DLH owned by the defendant lying at No. 26,—Road, New Delhi. Rs. 2,000

Dated 10—2—58.

Sd/ A,
Plaintiff.

1. Sex .... Female
2. Date of Birth ...14th October 1954
3. Name ......Parbati.

4. That the respondent has without reasonable excu[illegible] [illegible]ciety of the petiti- [illegible] The petitioneer [illegible] [illegible]nts.

5. That there is no collusion in the presentation of the petition and the petition has been presented without any unnecessary and improper delay.

6. That there is no legal ground why the relief asked for should not be granted to the petitioner.

7. That there has been no previous litigation amongst the parties with regard to the marriage by or on behalf of any of the parties.

8 That the marriage was solmonized in Delhi which is within the local limits of ordinary civil jurisdiction of this Hon'ble Court. The Husband and wife reside and last resided together in Delhi. This Hon'ble Court has therefore jurisdiction to try this petition.

It therefore prayed that a decree for restitution of conjugal rights be passed in favour of the petitioner against the respondent.

Sd/- Shanti Devi
Petitioner.
through
K. K. Mehra.
Advocate

Verification :

Verified on solemn affirmation that the contents of paras 1 to 8 are true to the best of the petitioner's information and belief.

Verified at Delhi on 19-8-1957

Sd/- Shanti Devi
Petitioner.

No 2. Petition for judicial separation.

IN THE COURT OF DISTRICT JUDGE AT DELHI

(*Matrimonial Jurisdiction*)

Lilavanti daughter of Ram Dass, wife of Jagan Dass, now residing at 102, Arya Pura Subzi Mandi, Delhi........ *Petitioner*

Versus

Jagan Dass s/o Murli Dhar, Resident of 205, Gandhi Nagar, Delhi........ *Respondent*

Petition for judicial seperation under Sec. 10 of the Hindu Marriage Act, 1955.

The petitioner above named begs to submit as under :—

1. That the petitioner was lawfully married to the respondent according to Hindu rites on 17th of January 1956, at 102, Arya Pura Subzi Mandi Delhi.

2. That the status and the place of residence of the parties to this petition at the time of the marriage and at the time of the filing of the petition was as under :—

Husband		*Wife*	
Status	**Place of residence**	**Status**	**Place of residence**
	(*Before Marriage*)		
Unmarried Hindu	205-E Gandhi Nagar, Delhi	Hindu Virgin	102, Arya Pura Subzimani, Delhi.
	(*At the time of filing of the petition*)		
Married Hindu	205, E Gandhi Nagar, Delhi.	Married Hindu	,,

3. That the marriage was duly consumated at Delhi and the parties had been co-habitating with each other as husband and wife at Delhi.

4. That the respondent after a few days of the the marriage started treating the petitioner badly and beat her on many oc asions The beating was witnessed by the neighbours without whose intervention therewas always a danger to the life of the petitioner. The respondent voilently beat the petitioner and turned her out of his house on 18-6-57. *The petitioner since then is living with her* parents and fears that if she returns to her husband's house he may not kill her

5. That the petitioner has not any way condoned the cruelty of the respondnt.

6. That the petition has not been presented in collu ion with the respondent.

7. That the petition has been presented without any unnecessary and improper delay.

8. That there is no other legal ground why the relief prayed for should not be granted to the petitioner.

9. That there has been no previous litigation in regard to the marriage by or on behalf of any party.

[illegible] *in Delhi* [illegible] linary civil [illegible] arties last [illegible] s therefore jurisdiction to grant the relief claimed.

It is therefore prayed that a decree for judicial separation in favour of the petitioner against the respondent be passed.

Sd/-Lilavanti
Petitioner.
Through R. D. Mathur.
Abvocate

Verification :—

Verified that the facts stated in the above petition are true to the best of the petitioner's information and belief.

Verified at Delhi on 19-8-1957.

Lilavanti
Sd/-Petitioner

No. 3—**Petition for annulment of marriage.**

IN THE COURT OF DISTRICT JUDGE AT DELHI.

Ram Ditta s/o Bhagat Ram, resident of 5043, Krishna Nagar, Karol Bagh Delhi......*Petitioner*

Vs.

Ram Piari d/o Gulzari Lal, wife of the Petitioner, now residing at 402-A, Gandhi Nagar, Delhi ...*Respondent.*

Petition for Annulment of marriage under Sec. 12 of the Hindu Marriage Act 1955.

The petitioner prays as under :—

Paras I to 3 same as Paras 1 to 3 of Petition No : 1......

4. That the respondent was at the time of marriage pregnant by some person other than the petitioner and the petitioner was at the time of marriage ignorant of this fact and proceedings have been instituted within one year from the date of the marriage and the martial intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existance of respondents pregnancy by some person other than the petitioner.

5. Paras 5 to 8 same as paras 5 to 8 in Petition No. 1...

It is therefore prayed that a decree of annualment of marriage be passed.

Sd/-
Petitioner

Verification same as in Petition no. 1......

No. 4. *Petition for Divorce.*

[Heading and title same as in Petition no. 3...]

Petition for divorce under Sec. 13 Hindu Marriage Act 1955 on the ground Adultry by wife.

The petitioner begs to submit as under :—

Paras 1 to 3 same as Paras 1 to 3 of petition no. 2 ...

4. That the respondent had illicit intercourse with persons other than the petitioner after the marriage between the parties. Several persons unknown to the petitioner visit the house of the petitioner in his absence and neighbours have seen the respondent with such persons in suspicious circumstances and compromising mood. The petitioner is not aware of the names and particulars of such persons and is unable to furnish the same.

5. Paras 5 to 8, same as in Petition no. 1...

It is therefore prayed that a decree for divorce be passed in favour of the petitioner against the respondent.

Sd/Petitioner

Verification as in petition No. 1

No. 5. Application Under S. 24 of the Hindu Marriage Act, 1955.

IN THE COURT OF DISTRICT JUDGE AT DELHI

Lal Chand s/o L. Muni Lal r/o 202 Darya Ganj Delhi. ...Petitioner

Vs.

Smt Shanti Devi d/o L. Kalu Ram r/o...
Respondent.

Application Under S. 24 of the Hindu Marriage Act, 1955.

Sheweth,

1. That the petitionar has filed a petition of divorce under S. 13 of the Act against the respondent on the ground of adultry.

2. That the facts stated in petition are false to the knowledge of the petitioner and petition has been brought with a view to harrass the respondent.

3. That the respondent has no independent income sufficient for her support. Besides she has two children to support one of whom is studying in a school. She has no means even to contest the present application.

In view of the above it is prayed that the petitioner be ordered to pay;

(a) a monthly sum of Rs...*Pendente lee*;

(b) a sum of Rs. 150/- as the expenses towards the expenses of the pending proceedings

Sd/-Shanti Devi
Respondent

Through.........(Advocate)

(Affidavit)

No 6. *Written statement to Petition No 1.*

[Heading and title same as in Petition' No 1.]

The respondent above named begs to state as under :—

1. That para one of the petition is admitted.

2. That para 2 of the petition is admitted.

3. That para 3 of the petition is admitted.

4. That Para 4 is totally wrong and is emphatically denied. It is wrong that the respondent has withdrawn from the society of the petitioner or that he has turned the respondent out of his home. The petitioner on the other hand deyoleped some mental trouble after the birth of a child. The

respondent has been getting her treated medically by some well known doctors at the place but the petitioner remained to be of unsound mind inspite of the best treatment she was getting. The petitioner also left the home of the respondent in his absence and without informing him. She has since then refused to come back in spite of many requests by the respondent and continues to be of unsound mind for more than the last 2½ years. It has therefore become impossible for the respondent to live with the petitioner because of her insanity.

5. Para 5 is admitted to the extent that there is no collusion between the parties but it is submitted that petition has been filed after a lapse of about 2½ years.

5 Para 6 is wrong and denied. The petitioner being of unsound mind is not competent to file the petition.

7. Para 7 is not denied.

8. Para 8 is admitted.

It is therefore prayed that the petition for restitution of conjeergal rights be dismissed and the petition of the respondent for judical seperation on the ground of petitioner's insanity be allowed.

Sd/ Petitioner.
through Advocate

[Verification]

No. 7. *Written statement to Petition No 2.*

[Heading and title same as in Petition No. 2.]

The respondent above named begs to submit as under :—

1. Para 1 is admitted.

2. Para 2 is admitted.

3 Para 3 is admitted.

4. Para 4 is denied, it is wrong and denied

that the [illegible] etitioner or treated [illegible] is no danger to the [illegible] It is also wrong that the respondent turned the petitioner out of his house. On the other hand the petitioner left the respondent's house in his absence without informing him. She has refused to come back and live with the petitioner inspite of many requests by the respondent in this behalf. The respondent even took some respectable people along with him to the house of petitionor's parents in order to bring the petitioner back but no heed has been paid to the respondent's request either by the petitioner or her parents. The respondent is still ready and willing to keep the petitioner with him.

5. Para 5 is irrellevant. There is no question of condonation since the respondent never treated the petitioner with cruelty.

6. Para 6 is not denied.

7. Para 7 is legal but it is submitted that the petitioner has no cause of action against the respondent.

8. Para 8 is denied. The petitioner has no legal right to present the petition. Moreover no legal right of the petitioner has been infringed.

9. Para 9 is admitted.

10. The jurisdiction of the Hon'ble Court is not denied.

It is therefore prayed that the petition be dismissed with costs.

[Signature and Verification].

No. 8. *Written statement to Petition No. 3.*

[Title]

1. Paras No 1 to 3 same as in written statement to petition No 2.

2. Para 4 is denied. It is wrong that the

respondent was pregnant by some other person as alleged The respondent got pregnant only by the petitioner after her marriage with him. The petition has been presented with some ulterior motives since the petitioner is a vagabond and wants to get rid of the respondent by foul means.

3. Paras 5 to 8 same as in written statement to petition No. 2.

It is therefore prayed that the petition be dismissed with costs.

[Signature and verification].

No. 9 *Written statement to Petition No. 4*
(Title)

1. Paras 1 to 3 are same as in petition No. 2

2 Para 4 is wrong and denied. It is absolutely wrong that the respondent ever had nter coursed with any person whome so ever other than the petitioner. It is also wrong that any body visits the respondent as alleged or that the respondent was ever founded in suspicious circumstances or compromising mood. The petitioner on the other hand wanted the respondent to lead an immoral life. He actually brought some persons who were deadly drunk to his house at odd hours and wanted the respondent to have sexual intercourse with those persons. The respondent however refused to submit herself to the wishes of the petitioner who felt annoyed and started treating the respondent badly. This petition has been brought only to harrass the respondent and to take a revenge by defaming the respondent and letting her down in the eyes of relations and other people.

4. Paras 5 to 8 same as in written statement to petition No. 2

It is therefore prayed that the petition he dismissed with costs.

(Signature and verification).

Petitions Under the Special Marriage Act, 1954 (No 43 of 1954).

No 10. *Petition for a decree of nullity of marriage...............*

In the District Court at...............

.... Petitioner

Versus

.... Respondent No. 1

... . ,, ...No. 2

Petition for a decree of nullity of marriage under S. 2 (1) of the Special Marriage Act, 1954 (No 43, of 1954 When petitioner is not a party to the marriage).

The petitioner prays as follows :—

1. A marriage between the respondents was solemnised under Chapter II of the Act by the Marriage Officer of ......at ......A certified copy of the certificate of marriage is attached with this petition.

2. The petitioner is related to Respondents (a) No.........being (State relationship)

3. The status and place of residence of the parties to the marriage before the marriage and at the time of filing the petition were as follows.

	Husband		Wife	
	Status	Place of residence	Status	Place of residence
(i) Before marriage				
(ii) At the time of filing the petition				

4. (In this paragraph particulars and place of co-habitation as husband and wife and the children from the marriage, if any may be given.

The date and place of birth and name and sex of each child and the fact whether the child is alives or dead should also be s'ated).

5. At the time of marriage (i) respondent No...... had a spouse living (ii) respondent No ...... was an idiot or a lunatic (iii) resondent No ...... being the husband of respondent No ...... had not completed the age of 21 years.

(One or the more of the above grounds may be pleaded and portions which are not applicable should be scored out. Facts on which the claim to relief is founded should be stated as distinctly as the nature of the case permits).

6. There has not been previores proceeding with regard to the marriage by or on behalf of any party. –

7. There has not been any unnecessary or improper delay in filing this petition.

8. There is no other legal ground why the relief should not be granted.

9. The marriage was solemnised/the respondent reside/the respondent last resided – together with-in the local-limits of the jurisdiction of this Court.

10 The petitioner therefore prays that the marriage solomnised under Chapter II of the Act between the respondents being null and void may be so declared by the Court by a decree of nullity.

(Sd).........Petitioner.

Verification

The above named petitioner states on solemn affirmation that paras I to.........of the petition are true to the best of the petitioner's information and belief.

Verified at.........(Place)

Date.........

(Sd).........Petitioner.

No. 11. Petition for divorce by mutual consent under S. 28 of the Special Marriage Act, 1954 (No. 43 of 1954).

IN THE COURT OF THE DISTRICT JUDGE AT....

....(Husband)
....(Wife).
Petitioners.

Petition for divorce by mutual consent under S. 28 of the Special Marrriage Act, 1954.

The petitioners pray together as follows :—

1. A marriage between the petitioners was solemnised under Chapter II registered under Chapter III of the Act by the Marriage Officer of....at...A certified copy of the certificate of marriage is attached to this petition.

2. The status and place of residence of parties to the marriage before marriage and at the time of filing the petition were as follows :—

Husband		*Wife*	
Status	**Place of residence**	**Status**	**Place of residence**
(*i*) Before marriage			
(*ii*) At the time of filing the petition			

3. In this paragraph state the particulars and places of cohabitation as husband and wife and the children from the marriage, if any, may be given. The date and place of birth and name and sex of each child and the fact whether the child is alive or died should also be stated).

4. The petitioners have been ilving separatlely

for a period of one year or more and have not been able together and the petitioners have mutualy agreed that the marriage should be dissolved.

5. The consent of either party has not been obtained by force, fraud or undue influence.

6. There is no cullusion between the petitioners.

7. There has not been any previous proceeding with regard to the marriage by or on behalf of any party.

8. There has not been unnecessary or improper delay in filing this petition.

9. There is no other legal ground why the relief should not be granted.

10. The marriage was solemnised petitioners reside petitioners last reside together, within the local limits of the jurisdiction of the Court.

The petitioners therefore, pray for a decree declaring the marriage to be dissolved with effect from the date of decree.

Sd............Husband
Sd............Wife
Petitioners.

Verification.

The above named petitioner (husband) states on solemn affirmation that paras 1 to...of the petition are true to the best of petitioner's information and belief.

Verified at. Sd......
Date...... (Husband) Petitioner

(Verification by wife as above).

No 12. *Application for permanent alimony and maintenance under S. 37 of the Special Marriage Act.*

In the District Court at.......................
Shrimati .... Applicant

Versus

Shri...Respondent.

Application for permanent alimony and naintenance under Section 37 of the Special Marriage Act, 1954 (No. 43 of 1954).

The applicant prays as under:—

(1) A proceeding between the parties under Chapter V/VI of the Act is pending in / has been dicided by this Court. Give particulas like section of the Act, number and title of case, date of decree or hearing etc)………

(2) The applicant owns no other movable or immovable property and has no other source of income except………(Give full details of applicants' property and income etc.).

(3) The applicant has no sufficient income for her maintenance and support.

(4) The respondent has sources of income and owns property mentioned below:—

…… .. (Give full particulars about respondents income and property, etc).

(5) The respondent is able ond legally bound to maintain and support the applicant in a manne benefiting his and applicants social position.

(6) The applicant has not canducted herself in any manner which would disentitle her from receiving maintenance and has not remarried.

(7) The applicant prays that the respondent

(sd)………… Applicant.

Verification.

The above-named applicant states on solemn affirmation that paras I………… of the application are true to the best of the applicant's information and belief.

Verified at ……………(Place)

Date ………

(sd) ………… Applicant.

PETITIONS UNDER THE INDIAN DIVORCE ACT

No 13. *Petition by husband for Dissolution of Marriage with damages against co-respondent by reason of Adultery.*

IN THE COURT OF THE DISTRICT JUDGE AT DELHI

Between John Frank by profession a photographer, residing at 10 Civil lines, Delhi. ......*Petitioner*

Mary James residing at 16 Alipur Road, Delhi. ......*Respondent.*

And

Henry Jackson, by profession a doctor; residing at 15 Foroze Shah Road New Delhi ..... (*Co respondent.*

Draft a petition for by a husband dissolution of marriage with damages against a Co-re spondent, by reason of adultry [P. U. 1953].

To the Judge of the District Court at Delhi.

The 23rd of January 1958.

The petition of the said John Frank sheweth:—

1. That your petitioner was, on March 5, 1950, lawfully married to the respondent Mary then Mary Bray, spinster at Calcutta.

2 That after his said marriage, your petitioner lived and cohabited with his said wife at Calcatta from 1950 to 1952 and then at Delhi with in the jurisdicition of this Court from 1953 up to 1957, and that your petitioner and his said wife have had issues of the said marriage, children, one son John Robinson aged 3 years and one daughter; Laura James aged 1 year.

3 That during the two years immediately by proceeding November 25, 1957, the Co-respondent Henry Jackson was constantly residing in the House of your petitioner at Civil lines afore said, and that, on divers occasions during the said per od, the date of which are unknown to your petitioner, the said Mary James, in your peitioners said house committed adultery with said Henry Jackson.

4. That, at the time of their said marriage, your petitioner was and is still are Christians

5. That no collusion and connivance exists between your petitioner and his said wife for the purpose of abtaining a dissolution of their said marriage or for any other purpose.

Your petitioner, therefore prays that this Court will decree a dissolution of the said marriage by reason of the aforesaid adultery and that the said Henry Jackson do pay the sum of Rs. 5,000 as damages in respect of the said adultery, such damages to be paid to your petitioner or otherwise paid or applied as to this Hon'ble Court seems fit.

Sd./-John Frank

Verification.

I, John Frank the petitioner named in the above petition, do declare that what is stated there in is true to the best of my information and belief.

Verified at Delhi on 23. 1. 1958.

No. 14. *Petition by wife for dissolution of Marriage.*

(Title).

The petition of......falsely called......

Sheweth.

1. That on the......day of...1955, your petitioner, than a spinster of 19 years of age, was married in fact though not in law to..., then a bachelor of about 28 years at....

2. That from the said date your petitioner lived and cohabited with the said,... at divers places, and particularly at...aforesaid

3. That the said...had never consumated the said pretended marriage.

4. That at the time of the celebration of your

petitioner's said pretended marriage, the said...was, by reason of his impotency or malformation, legally incompetent to enter into the contract of marriage.

Draft a petition by wife for dissolution of marriage. [P. U. 1953, 55]

5. That at the time of the said pretended marriage, your petitioner and the respondent were and are still Christians.

6. (State the residence of the respondent).

7. That there is no collusion or connivance between the petitioner and the respondent with respect to the subject of the suit, or for any other purpose.

Your petitioner therefore prays that this Hon'ble Court will declare that the said marriage is null and void.

(For signature and verification see Petition No. 13).

No 15 *Petition by wife for Judicial Separation, on the ground of husband's adultery.*

IN THE COURT OF THE DISTRICT JUDGE AT AGRA

Between Catherine Robinson residing at 6, Raja Ki Mandi, Agra..........................Petitioner

And Samual Robinson, by profession a Doctor residing at 5, Saddar Road, Agra. *Respondent*

Draft a petition by wife for Judicial sepration on the ground of her husband's adultery. [P. U. 1954]

To the Judge of the District Court at Agra.

The 28th Febuary, 1957.

The petition of the said Catherine Robinson, sheweth,

1. That on 24. 5. 1954 your petitioner then Catherine Washington was lawfully married at the St. Paul's Church Agra.

2. That after the said marriage, your petitioner lived and cohabited with her said husband at 5 Saddar Road, Agra and that your petitioner and

her said husband have issue of their said marriage, one daughter Elizebeth , aged 3 years.

3. As in para 5 Petition No. 13.

4. That on divers occassions in the months of October, November and December 1957 the said Samual Robinson respondent aforesaid committed adultery with one Shanti Phillip who was then living in the service of the said Samuel Robinson and your petitioner at their said residence 5 Saddar Road, Agra aforesaid.

5. That on divers occasions in the months of July and August 1957 the said Samuel Robinson committed adultery with Kamini Stewart w/o John Stewart who was then staying as a guest of the said Samuel Robinson and your petitioner at their said residence 5 Saddar Road, Agra afore said.

6. As in para 7 petition No 13.

Your petitioner therefore prays that this Hon'ble Court will decree a judicial separation to your petitioner from her said husband by reason of his aforesaid adultery.

Signed/Catherine Robinson
Patitioner.

(Verification)

No. 16 *Petition by wife for Judicail seperation on the ground of desertion*

1. That on September 15, 1957, your petitioner was lawfully married to Charles Henry at the St. Paul's Church at Delhi.

2. That after her said marriage, your petitioner lived and cohabitated with the said Charles Henry at Delhi until November 15, 1957 and that your petitioner and her husband have had issue of their said marriage one son named James Henry aged 1 year.

3. That on the said November 15, 1957, the said Charles Henry deserted your petitioner against

her wish and without reasonable excuse, and from that time down to the present, being for the space of two years and upwards, has continued to desert your petitioner.

4 As in para 5 petition No 13.

5. *That your petitioner and the said Charles Henry last resided together at Delhi within the jurisdiction of this Hon'ble Court and your petitioner still resides at Delhi.*

(Prayer :—See last precedent)

(Signature and Verfication)

No. 17 *Respondent's answer to petition* No. 13

(Title)

Mary James the respondent by Shri M. L. Lonial Advocate, her Vakil (or Counsel) in answer to the petition of John Frank says that she denies that she had on diverse, or any occasions, committed adultery with Henry Jackson, as alleged in para 3 of the said petition.

Whereof the respondent prays that this Hon'ble Court will reject the said petition.

Verification.

(Signed) Mary James

Respondent

No. 18. *Corespondent's Answer.*

Petition No 13

(Title)

to

nies

lary

Whereof the said Henry Jackson prays that this Court will reject the prayer of the said petitioner

and order him to pay the costs of, and incident to, the said petition.

Signed Henry Jackson

Corespendent.

No. 19 *Answer to petition by wife for judicial separation, on the ground of the Husband's Adultery,*

(Petition No 15.)

(Title)

Samuel Robinson, the respondent, by Y. P. Mehta, his attorney says : –

1 That he denies that he committed adultery with Shanti Phillip, as alleged in para 4 of the petition.

2. That the petitioner condoned his said adultery with Shanti Phillip, if any.

3. That he denies that he committed adultery with Kamini Stewart as alleged in para 5 of the petition.

4. That the petitioner condoned the adultery with the said Kamini Stewart, if any.

Sd./Sameul Robinson
Respondent.

WRITS

No. 1 *Writ of Certiorari.*

IN THE HIGH COURT OF JUDICATURE AT ALLAHBAD

Miscellaneous Writ Application No...of 19...Under Art. 226 Constitution of India.

Vs.

A s/o ...caste...resident of... *Petitioner.*

1. Rent Control and Eviction Officer...
2. B s/o...caste...resident of......

Respondents

Petition of A, described above, for a *writ of certiorari* Under Art. 226 of the constitution of India.

Respectfully sheweth :—

1. That the petitioner is the owner of a house No ...Road...

2 That a portion of the house was let out to C a tenant who vacated the premises on... .

3. That the petitioner occupied the said premises as he himself need it.

4. That the Rent Control Eviction Officer... alloted the said premises to B respondent No. 2 without consulting the petitioner and served a notice upon the petitioner on ... to vacate the portion with in a month.

5. That the said order of the Rent Control Officer is illegal and without jurisdiction for the reasons given below.

(*i*) That the U. P. Rent Control and Eviction Act (Act III of 1951) is void as it is in consistent with the provisions of Fundamental Rights under Art 19 (i) (f) Part III of the Constitution.

(*ii*) That in any event under the rules framed of the State Government the Rent Control Officer had no jurisdiction to allot the portion of the house occupied by the petitioner without consulting his wishes.

It is therefor prayed :—

(*i*) That the Hon'ble High Court will be pleased to issue a writ of certiorari to the Rent Control and Eviction Officer Agra and quash his order dated.........

(*ii*) That an ad-interim injunction be issued staying the operation of the said order pending the disposal of the application.

(Sd) Petitioner

(Sd) Advocate for the Petitioner.

Affidavit

IN THE HIGH COURT OF JUDICATURE AT ALLAHBAD.

Mics. Writ No ......of

A.........— *Petitioner*

Vs.

The Rent Control and Eviction officer and another.........Respondents.

Affidavit of A S/o......... caste .... resident of.........

I, A above named do hereby solemnly affirm and state as follows :—

1. That the contents of Paragraph 1 and 4 of the petition annexed herewith are true to my personal knowledge, contents of the rest paras are based on advice received from my cunsel which I believe to be true, that no part of it is false and nothing has been concealed.

Sd/-A (Petitioner)

No. 2 Writ of Habeas Corpus.

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Miscellaneous Writ No.........of 19..............
under Art. 226 of the Constitution of India.
Jagannath, son of...... (add description & address)

......Petitioner

Vs.

The State of Uttar Pradesh, Lucknow

......Respondent

'etition of Jagannath, described above, for a writ of *Iabeas Corpus* under Art. 226 of the Constitution of ndia. Respectfully sheweth:

1. That the petitioner is employed as a school-eacher in Kanpur city, in...School since 1948 and as been discharging his duties as such without in ny way concering himself with political activities of ny type or description.

2 That the Petitioner was arrested on the 5th lay 1957 under an order of District Magistrate, Ianpur, issued on that day under the Preventive Jetention Act. 1950, and has been ordered to be etained in the Central Jail, Kanpur, for a period of 5 months.

3. That the order came as a complete surpise to he Petitioner, who at the time of his arrest as also vhen being confined to jail, requested his captors hat he should be informed of the reasons for his rrest and detention, but no information was vouch-afed to him. More than ...
0th c ...
nform ...
e was ...
nd trying to create disaffection against the U P. Government."

4. That the aforesaid information is in point of fact o information of the reason for detention, as the easons were not precisely or specifically stated and vere very vague.

5. That no opportunity was afforded to the Petitioner of making a representation against the order as provided by Art. 22 (5) of the Constitution of India.

6. That detention having been ordered for 15 months, the order is entirely illegal. There has een no certification of the sufficiency of the cause

On 5th May 1952 the District Magistrate of Kanpur issue an order for the detention of Jagannath a teacher of Kanpur, under the Preventive Detention Act, 1950, for a period of fifteen month He was arrested and detained in the Central Jail, Kanpur. On 10th July 1952 the District Magistrate informed him that he was detaind as he was suspected of indulging in illegal activities and trying to create disaffection against the U. P Government. Jagannath wants to file a writ petition. Please draft the appropriate petition. [D. U. 1953].

of detention of the Petitioner by an Advisory Board constituted of persons who are or have been qualified to act as Judges of High Court, nor are there such circumstances in the classes of cases prescribed by Parliament of India wherein detention beyond a period of three months would be legal.

It is, therefore, respectfully prayed that a writ of *Habeas Cropus* be issued against the respondent directing it to release the Petitioner.

July 18, 1957 Sd/Advocate for the Petitioner.

Note Affidavit of the Petitioner in support of the petition is attached.

(Affidavit)

(As in previous Writ)

[THE END]

Printed at the National Printing Press, Subzimandi Delhi.

दिवंगत श्री गोविन्दलाल जी व्यास
की स्मृति में नागरी भंडार,
बीकानेर को प्रदत्त।